F.H 136 700472

CLERK'S COPY.

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

October Term, 1945

No. 320

FEDERAL TRADE COMMISSION, PETITIONER

vs.

A. P. W. PAPER COMPANY, INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED AUGUST 18, 1945
CERTIORARI GRANTED OCTOBER 8, 1945

INDEX

	PAGE
Statement Under Rule 13	1
Certification of Transcript of Proceedings	3
Complaint	4
Order Extending Time for Filing	25
Answer	26
Order Appointing Trial Examiner and Fixing Time and Place for Taking Testimony	33
Order Extending Time for Filing Brief in Support of Allegations of he Complaint	35
Order Extending Time for Filing Brief in Opposition to the Allegations of the Complaint	36
Notice	37
Findings as to the Facts and Conclusion	38
Order to Cease and Desist	51
Transcript of Hearing, Dated June 13th 1942, Albany, New York	53
Transcript of Hearing, Dated June 15th, 1942, Wilmington, Delaware	80
Transcript of Hearing, Dated June 16th, 1942, Baltimore, Maryland	146
Transcript of Hearing, Dated June 18th, 1942, Staunton, Virginia	180
Transcript of Hearing, Dated June 19th, 1942, Lynchburg, Virginia	251
Transcript of Hearing, Dated June 30th, 1942, Washington, D. C.	290

PAGE

Transcript of Hearing, Dated September 15th, 1942, New York, New York 331

Order Closing the Taking of Testimony 357

COMMISSION'S WITNESSES:

Dwight G. W. Hollister:
Direct 55
Cross 76

Mrs. George V. Hastings:
Direct 81

Miss Catherine Horty:
Direct 88
Cross 91
Redirect 94, 97
Recross 96, 98

Cecelia J. Donohue:
Direct 99
Cross 100
Redirect 104

Mrs. Clark Colgain:
Direct 106
Cross 111
Redirect 112

Mrs. Percy L. Henderer:
Direct 113

Mrs. R. C. Young:
Direct 118

David C. Blake:
Direct 121
Cross 125
Redirect 127
Recross 128

PAGE

Ashland L. Baker:
Direct 130
Cross 132
Redirect 133

Miss Miriam A. Braddock:
Direct 134

Mrs. John L. Kusching:
Direct 137, 138
On Voir Dire 138
Cross 141
Redirect 142, 144
Recross 143

Charles E. Witler:
Direct 147
Cross 150
Redirect 154
Recross 156

William E. Lusk:
Direct 157
Cross 160
Redirect 160
Recross 161

Miss Addie McElroy:
Direct 161

Mrs. A. Y. Pindell:
Direct 170
Cross 172
Redirect 177
Recross 177

PAGE

Mrs. Stuart Thomas Cox:
Direct 181
Cross 184
Redirect 190

Mrs. Herbert Waite:
Direct 193
Cross 194
Redirect 198

Mrs. Frank Shaffer:
Direct 199
Cross 203
Redirect 207

Mrs. Cornelia Barber:
Direct 209
Cross 211

Miss Anna Hedrick:
Direct 212
Cross 214
Redirect 217
Recross 217

Mrs. J. G. Cronise:
Direct 219
Cross 220
Redirect 226

Mrs. W. L. McGuffin:
Direct 228
Cross 232
Redirect 237

Mrs. R. H. McCoy:
Direct 239

PAGE

Miss Grace M. Brunk:
Direct 240
Cross 243
Redirect 247
Recross 248

C. W. Potter:
Direct 253
Cross 256
Redirect 257

Mrs. Frank J. Ross, Jr.:
Direct 259
Cross 262

Mrs. Judson S. Fielder:
Direct 268

Mrs. Robert M. Stump:
Direct 270
Cross 272
Redirect 278

Mrs. William D. Storey:
Direct 281

Mrs. Herbert J. Garrett:
Direct 283
Cross 285
Redirect 286
Recross 287

H. J. Hughes:
Direct 291
Cross 309

Robina Rae:
Direct 314, 318
On Voir Dire 318
Cross 327

RESPONDENT'S WITNESS:

PAGE

James T. Forrest.
Direct 332
Cross 348

COMMISSION'S EXHIBITS:

1—Trade-mark registration covering packages of toilet paper, No. 82,193, registered June 13, 1911. Marked in evidence at folio 184 358

2—Original trade-mark taken out by A. P. W. Paper Company for Red Cross mark. Trade-mark 311,124. Registered March 13, 1934. Marked in evidence at folio 187 358

3—Original trade-mark taken out by A. P. W. Paper Company for Red Cross mark. Trade-mark 311,125. Registered March 13, 1934. Marked in evidence at folio 190 358

4—Proof of advertisement appearing in Good Housekeeping Magazine, February, 1940. Marked in evidence at folio 197 358

5—Proof of advertisement appearing in Ladies' Home Journal, March, 1940. Marked in evidence at folio 197 358

6—Letterhead of A. P. W. Paper Company. Marked in evidence at folio 201 358

7—Paper bearing the wording:

Roll toilet tissue—Red Cross
filed separately
marked: 2-1

4747-1

Marked in evidence at folio 205 359

PAGE

8—Paper bearing the wording:
Roll toilet tissue—Red Cross
filed separately
marked: 2-2

4747-1

Marked in evidence at folio 208 359

9—Paper bearing the wording:
Pack toilet tissue—Red Cross
filed separately
marked: 2-3

4747-1

Marked in evidence at folio 209 359

10—Paper bearing the wording:
Roll paper towels—Red cross
filed separately
marked: 2-4

4747-1

Marked in evidence at folio 213 360

11—Paper bearing the wording:
Pack of paper towels—Red Cross
filed separately
marked: 2-5

4747-1

Marked in evidence at folio 217 360

12—Paper bearing the wording:
Pack toilet tissue—Red Cross
filed separately
marked: 2-6

4747-1

Marked in evidence at folio 221 360

PAGE

13—Charter, By-Laws and Endowment Fund Regulations of The American National Red Cross, Washington, D. C. dated September, 1931. Marked in evidence at folio 893 361

14-A and 14-B—Letter, dated September 23, 1932, from Fraser, Myers & Manley to H. J. Hughes, Esq. Marked in evidence at folio 914 388

15—Document purporting to be a letter of Rev. Henry W. Bellows, D. D., President of The American Association for the Relief of the Misery of Battlefields, containing Seal of American Red Cross Library and dated New York, 1866. Marked in evidence at folio 949 389

16—Original Incorporation of The American Association of the Red Cross, dated July 1, 1881. Marked in evidence at folio 961 390

17—Constitution of The Red Cross. Marked in evidence at folio 961 392

17-B—Certificate of Incorporation, The American National Red Cross No. 2359, Recorded April 29, 1893, 11 A. M. Marked in evidence at folio 1058 ... 394

18—Frontispiece of booklet entitled "The Red Cross", published in 1895. Marked in evidence at folio 966. 397

19—Title page of book entitled "The Red Cross", by Clara Barton. Marked in evidence at folio 970 397

20—Picture of the first Red Cross warehouse in Washington, D. C. Marked in evidence at folio 970 397

21—Picture of National Red Cross Headquarters in Washington, D. C., from 1892 to 1897. Marked in evidence at folio 970 397

22—Picture showing Red Cross Hotel at time of Johnstown Flood, 1889. Marked in evidence at folio 978. 397

PAGE

23—Picture showing Miss Barton's room at Charleston Red Cross headquarters. Marked in evidence at folio 978 397

24—Cover page of Boyd's Directory of the District of Columbia for the year 1885. Marked in evidence at folio 986 397

25—Page 938 of Boyd's Directory of the District of Columbia for the year 1885, showing listing of the American Association of the Red Cross. Marked in evidence at folio 986 397

RESPONDENT'S EXHIBITS:

1-A - 1-M—Petition, Statement and Power of Attorney, filed in connection with application for registration by A. P. W. Paper Co., Inc., for Toilet Paper and Paper Towels, with various papers annexed. Marked in evidence at folio 1014 398

2-A - 2-M—Petition, Statement and Power of Attorney, filed in connection with application for registration by A. P. W. Paper Co., Inc., for Paper Towels, with various papers annexed. Marked in evidence at folio 1014 411

3—Letter, dated January 9, 1934, from H. J. Hughes to James T. Forrest. Marked in evidence at folio 1022 424

4-A - 4-I—Letter, dated January 15, 1934, from James T. Forrest to H. J. Hughes. Marked in evidence at folio 1025 425

5—Letter, dated January 31, 1934, from H. J. Hughes to James T. Forrest. Marked in evidence at folio 1029 432

PAGE

6—Letter, dated February 6, 1941, from Fraser, Myers & Manley to Hon. Commissioner of Patents. Marked in evidence at folio 1040 433

7—Letter, dated February 10, 1941, from J. A. Brearley to Messrs. Fraser, Myers & Manley. Marked in evidence at folio 1041 434

8—Definition of the words Red Cross as given in the Oxford English Dictionary. Marked in evidence at folio 1060 435

9—H. R. 6911, Exhibit II—Receipts, resources, expenditures, and unexpended balances, annually—American Red Cross for years 1900 through 1941. Marked in evidence at folio 1053 438

10—H. R. 6911, Exhibit IV—Membership, adult and junior—American National Red Cross for years 1900 through 1941. Marked in evidence at folio 1053 440

11—Report No. 1256 of Mr. Denby, from the Committee of Foreign Affairs to accompany H. R. 22311, Sixty-First Congress, Second Session. Marked in evidence at folio 1054 441

12—Reprint of H. R. 14330, Sixty-Fifth Congress, Third Session. Marked in evidence at folio 1055 446

13—List of Registered Trade-marks found in the records of the United States Patent Office. Marked in evidence at folio 1056 448

United States Circuit Court of Appeals

FOR THE SECOND CIRCUIT

A. P. W. PAPER COMPANY, INC.,

Petitioner,

v.

FEDERAL TRADE COMMISSION,

Respondent.

Statement Under Rule 13

This proceeding was commenced by service of a complaint and notice of the Federal Trade Commission upon respondent, A. P. W. Paper Company, Inc., Albany, New York, on April 11th, 1942.

The name of the respondent is A. P. W. Paper Company, Inc., a New York corporation, and there have been no changes of parties in this proceeding.

The complaint of the Federal Trade Commission was served upon the respondent on April 11, 1942 and the answer of the respondent thereto was filed May 20, 1942.

The respondent has not been arrested nor was bail taken nor property attached in this proceeding.

Various hearings were had before a trial examiner of the Federal Trade Commission, as follows:

June 13th, 1942, Albany, New York;
June 15th, 1942, Wilmington, Delaware;
June 16th, 1942, Baltimore, Maryland;
June 18th, 1942, Staunton, Virginia;
June 19th, 1942, Lynchburg, Virginia;
June 30th, 1942, Washington, D. C.
September 15th, 1942, New York, N. Y.;

4 *Statement Under Rule 13*

and the final argument was had on March 31st, 1943, before the Federal Trade Commission, consisting of Hon. Robert E. Freer, Chairman, and Hon. Garland S. Ferguson, Hon. Charles H. March, Hon. Ewin L. Davis, and Hon. William A. Ayres, members of the Commission. No reference was had herein.

The final order of the Federal Trade Commission to cease and desist was entered January 7th, 1944 and the petition for review was filed in the Office of the Clerk of the United States Circuit Court of Appeals for the Second Circuit on February 16th, 1944.

5

Certification of Transcript of Proceedings

UNITED STATES OF AMERICA

BEFORE

FEDERAL TRADE COMMISSION

Docket No. 4747

In the Matter

of

A. P. W. PAPER COMPANY, INC.

I, Otis B. Johnson, Secretary of the Federal Trade Commission and official custodian of its records, do hereby certify that transmitted herewith is a full, true, and complete transcript of proceedings had before the Federal Trade Commission in the above entitled matter, and separate original exhibits marked:

2–1	2–2	2–3	2–4	2–5	2–6
4747–1	4747–1	4747–1	4747–1	4747–1	4747–1

That this transcript is certified to the United States Circuit Court of Appeals for the Second Circuit, pursuant to the filing in said Court of a petition for review of an Order to Cease and Desist, dated January 7, 1944, entered by the Federal Trade Commission in the above indicated proceeding.

In witness whereof, I hereunto subscribe my name, and affix the seal of the said Federal Trade [SEAL] Commission, at its office in the City of Washington, D. C., this 25th day of April, A. D. 1944.

OTIS B. JOHNSON
Otis B. Johnson,
Secretary

10

Complaint

UNITED STATES OF AMERICA

BEFORE

FEDERAL TRADE COMMISSION

Docket No. 4747

In the Matter

11

of

A. P. W. PAPER COMPANY, INC., a corporation.

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission having reason to believe that A. P. W. Paper Company, Inc., hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest hereby issues its complaint, stating its charges in that respect as follows:

12

Paragraph One: Respondent, A. P. W. Paper Company, Inc., is a corporation organized and doing business under and by virtue of the laws of the State of New York, having its principal offices and place of business at the foot of Bridge Street in the City of Albany, New York. Branch offices are maintained by respondent in a number of the principal cities of the various states of the United States. Respondent company was incorporated originally on July 19, 1877, as Albany Perforated Wrapping Paper Company. On June 6, 1930, respondent changed its corporate name to its present title.

Paragraph Two: Respondent is now, and for more than five years last past has been, engaged in the manufacture, offering for sale, sale and distribution of toilet tissues and paper towels for household and institutional use. Said products are sold and distributed under various brand names and trade marks. Respondent causes and has caused this toilet tissue and paper towels, when sold by it, to be transported from its said place of business in Albany, New York, to the purchasers thereof at their respective points of location in the various states of the United States other than the State of New York, in the District of Columbia, and in foreign countries. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said toilet tissues and paper towels in commerce between and among the various states of the United States, in the District of Columbia, and with foreign countries.

Paragraph Three: On August 8, 1864, a diplomatic conference was convoked at Geneva Switzerland, attended by representatives of some 26 European governments. The outcome of this conference was the Geneva convention of August 22, 1864, known as the Red Cross convention for the "Amelioration of the Condition of the Wounded in Time of War."

Article VII of this convention provided that a distinctive and uniform flag should be adopted for hospitals, ambulances and evacuations, such flag to be accompanied on every occasion by the National flag. Arm-badges (brassards) were allowed for individuals neutralized. It was further provided in this article:

> "The flag and the arm-badge shall bear a red cross on a white ground."

Twelve European countries were signatories to this convention and some thirty-eight countries throughout the

world, including the United States, gave their adherence to the convention and thereby became parties thereto.

As a result of a further international convention concluded at Geneva, Switzerland, on October 8, 1868, the provisions of the original Red Cross Convention were adapted and made applicable to Naval warfare. Hospital ships were to make themselves known by hoisting, together with their national flag, "the white flag with a red cross provided by the Geneva Convention."

Leading world powers, including the United States, "animated by a desire to lessen the inherent evils of warfare as
17 far as within their power, and wishing for this purpose to improve and supplement the provisions agreed upon at Geneva on August 22, 1864, for the amelioration of the condition of the wounded in armies in the field", concluded a further international Red Cross convention at Geneva on July 6, 1906.

This convention enlarged, extended and clarified former provisions of the original 1864 convention and more clearly defined the responsibilities of belligerents with respect to the sick and wounded.

Article 18 of Chapter VI of the 1906 convention provided:

> "Out of respect to Switzerland, the heraldic em-
> 18 blem of the red cross on a white ground formed by the reversal of the Federal colors, is continued as the emblem and distinctive sign of the sanitary service of armies."

Articles 19, 20, 21 and 22 of Chapter VI, provided respectively: That this emblem was to appear on flags and brassards as well as upon all materiel appertaining to the sanitary service; that protected personnel should wear attached to the left arm brassards bearing a red cross on a white ground; that the distinctive flag of the convention could only be displayed over the sanitary formations and

establishments which were given protection, and that the sanitary formations of neutral countries should fly the flag of the convention. Articles 23 and 27 of this convention prohibited, or undertook to prohibit, commercial use of the Red Cross name or emblem.

Article 27 of Chapter VII of the 1906 convention, entitled "Repression of Abuses and Infractions", provided as follows:

> "The signatory powers whose legislation may not now be adequate engage to take or recommend to their legislatures such measures as may be necessary to prevent the use, by private persons or by societies other than those upon which this convention confers the right thereto, of the emblem or name of the Red Cross or Geneva Cross, particularly for commercial purposes by means of trade-marks or commercial labels.
>
> "The prohibition of the use of the emblem or name in question shall take effect from the time set in each act of legislation, and at the latest five years after this convention goes into effect. After such going into effect, it shall be unlawful to use a trade-mark or commercial label contrary to such prohibition."

Article 30 of the convention provided that it shall become operative, as to each power, six months after the date of deposit of its ratification. Article 31 provided that the convention, when duly ratified, should supersede the convention of August 22, 1864, in the relations between the contracting states, the 1864 convention to remain in force between the parties who signed it but who may not also ratify the 1906 convention.

Article 33 of the 1906 convention provided that each of the contracting parties should have the right to denounce the convention, but that this denunciation should only become operative one year after a notification in writing should

22 *Complaint*

have been made to the Swiss Federal Council, which should forthwith communicate such notification to all the other contracting parties, such denunciation to become operative only in respect to the power giving it.

The Government of the United States adhered to the original Red Cross convention of 1864 on March 1, 1882. The convention of July 6, 1906, was ratified by the Senate December 19, 1906, ratified by the President January 2, 1907, ratification was deposited February 9, 1907, and the convention was proclaimed August 3, 1907. The 1906 convention became operative as to the United States six months
23 from February 9, 1907, that is, in August 1907. This convention has never been denounced by the United States either in whole or in part.

The United States became a party signatory to a new and still further Red Cross Convention concluded at Geneva on July 27, 1929, by some 45 countries of the world "equally desirous of diminishing, so far as lies within their power, the evils inseparable from war, and wishing to perfect and complete, for this purpose, the provisions agreed upon at Geneva, August 22, 1864, and July 6, 1906, to ameliorate the condition of the wounded and the sick of armies in the field." This Convent ..., after broadening and making more definite existing treaty provisions relating to the foregoing, includ-
24 ing the rights and duties of belligerents in such relation, provides in Article 19 that "out of respect to Switzerland the heraldic emblem of the red cross on a white ground, formed by a reversal of the Federal colors, is continued as the emblem and distinctive sign of the sanitary service of armies."

Article 20 of this Convention provides that this emblem shall appear on flags and brassards as well as upon all materiel appertaining to the sanitary service.

Article 24 provides that the emblem of the red cross on a white ground and the words Red Cross or Geneva Cross

may be used, whether in time of peace or war, only to protect or designate sanitary formations and establishments, the personnel and materiel protected by the Convention.

Article 25 provides that the provisions of the Convention shall be respected by the high contracting parties under all circumstances.

Articles 28 to 30 inclusive, of Chapter VIII, deal with "The Repression of Abuses and Infractions." Article 28 provides that the Governments of the high contracting parties "whose legislation may not now be adequate shall take or shall recommend to their legislatures such measures as may be necessary at all times: 26

> (a) "to prevent the use by private persons or by societies other than those upon which this convention confers the right thereto, of the emblem or the name of the Red Cross or Geneva Cross, as well as any other sign or designation constituting an imitation thereof, whether for commercial or other purposes."

Sub-paragraph (b) of article 28 obligates each state to enact legislation prohibiting the use of the arms of the Swiss confederation or any imitation thereof as a trade-mark, label, or in any way contrary to commercial ethics or under conditions wounding Swiss pride. 27 It is provided in sub-paragraph (c) that these respective prohibitions shall take effect from the time set in each act of legislation or at the latest five years after the convention goes into effect, and that after such going into effect it shall be unlawful to take out a trade-mark or commercial label contrary to such prohibitions.

The United States Senate ratified this convention January 7, 1932; it was ratified by the President on January 16, 1932, ratifications were deposited at Geneva February 4, 1932; and on August 4, 1932, the convention was proclaimed by President Hoover "to the end that the same and every

article and clause thereof may be observed and fulfilled with good faith by the United States of America and the citizens thereof."

Thus the United States in 1906 and in 1932 respectively, if it had not already done so, obligated itself by solemn treaty to enact legislation prohibiting commercial use and exploitation of the Red Cross name and emblem.

The United States on June 20, 1936, carried out the obligation undertaken in paragraph 28 (b) of the convention of July 27, 1929, as to the Swiss flag, by enacting a law prohibiting the commercial use of the coat of arms of the
29 Swiss Confederation.

Nearly all countries of the world have now adhered to the Geneva convention as revised in 1906 and 1932 by diplomatic conferences. Conferences held at the Hague in 1899 and 1907 extended to sea warfare the principles of the Geneva conventions. The white flag bearing the red cross has now become the protecting symbol of the Red Cross throughout the world.

Red Cross Societies have been established in all civilized countries as a result of the international conferences at Geneva.

From 1866 on down to the present time, the Red Cross
30 Service has been employed in ministering to sick and wounded military forces throughout the world. The ministrations of this service, particularly in the United States, have also been extended to cover relief and succor to victims of great peace-time disasters.

Paragraph Four: The introduction and development of the Red Cross movement into the United States were chiefly due to the zeal and activities of Clara Barton, known as the founder of the American branch of the organization. The American National Association of the Red Cross was first incorporated in July 1881 under the laws of the District of Columbia. It was reincorporated April 17, 1893, again un-

der the laws of the District of Columbia, and on June 6, 1900, the organization was incorporated by Act of Congress as the American National Red Cross. The Act recited that whereas a permanent organization or agency was needed in every nation to carry out and execute the humane objects and purposes contemplated by the Geneva Convention of 1864, with the power to adopt and use the distinctive flag and arm badge provided in Article 7 of that Convention, which should be the sign of the Red Cross, it was believed that the importance of the work demanded a reincorporation by the Congress of the United States. The new corporation succeeded to all the rights and property which had been hitherto held, and to all the duties which had theretofore been performed, by the American National Red Cross as a corporation organized under the laws of the District of Columbia, which organization was thereby declared dissolved.

Under the 1900 Act it was made a misdemeanor for any person to falsely and fraudulently hold himself out as, or to represent, or pretend himself to be, a member of, or an agent for, the American National Red Cross for the purpose of soliciting, collecting or receiving money or material, or to wear, or display the sign of the Red Cross or any insignia colored in imitation thereof for the fraudulent purpose of inducing the belief that he was a member of or an agent for the American National Red Cross.

The Act further provided that the American National Red Cross should on the first day of January of each year transmit to Congress an itemized report of all receipts and expenditures and of its proceedings during the preceding year and should also give such information concerning its transactions and affairs as the Secretary of State might from time to time require, and that in respect of all business and proceedings in which it might be concerned in connection with the War and Navy Departments of the Government it should make reports to the Secretary of War and to the

Secretary of the Navy, respectively. Congress reserved the right to repeal, alter, or amend this Act at any time.

The United States being one of the signatory powers of the Treaty of Geneva guaranteeing the neutrality of persons caring for the sick and wounded and all supplies for the same, and the American National Red Cross being the official organization in the United States existing under this treaty, and so recognized by the International Red Cross Committee of Geneva, it became important to place the American organization under Government supervision, which the charter of June 6, 1900, had not provided. All the well-organized
35 foreign Red Cross societies had already been placed under government control, being generally subordinate to the war or navy departments of such governments. This was particularly true in the case of Great Britain, France, Germany, Austria, Italy and Japan.

The American National Red Cross was nationally incorporated by an Act of Congress of January 5, 1905, which repealed the prior Congressional Act of June 6, 1900. The Act of 1905 undertook to give statutory protection to the Red Cross emblem, which was then being used by the American National Red Cross and the medical societies of the Army and Navy. Among other powers confirmed was that "to have
36 the right to have and to use, in carrying out its purposes hereinafter designated, as an emblem and badge, a Greek Red Cross on a white background, as the same has been described in the Treaty of Geneva, August twenty-second, Eighteen Hundred and Sixty-Four, and adopted by the several nations acceding thereto." The Society was authorized to act in matters of relief arising under that convention by furnishing volunteer aid to the sick and wounded of armies in time of war, in accordance with the spirit and conditions of the Geneva Conference, and a provision in the 1905 Act extended the national and international relief to be carried on by the Society to that of investigating the sufferings

caused by pestilence, famine, fire, floods and other great national calamities, and to devising and carrying on measures for preventing the same.

The Act of 1905 also made it unlawful for any person within the jurisdiction of the United States to falsely hold himself out as, or to represent or pretend himself to be a member of, or an agent for, the American National Red Cross Society, for the purpose of soliciting, collecting or receiving money or material; or for any person to wear or display the sign of the Red Cross or any insignia colored in imitation thereof for the fraudulent purpose of inducing the belief that he was a member of, or an agent for, the American National Red Cross. This section then proceeded to prohibit commercial use of the Red Cross name and emblem by declaring it to be unlawful within the territory of the United States and its exterior possessions, for any person, corporation, or association other than the American National Red Cross and its duly authorized employees and agents and the Army and Navy sanitary and hospital authorities of the United States, to use the emblem of the Greek Red Cross on a white background, or any sign or insignia made or colored in imitation thereof, or the words "Red Cross" or "Geneva Cross" or any combination of these words, for the purpose of trade or an advertisement to induce the sale of any article whatsoever or for any business or charitable purpose. This section further provided that any one violating its provisions should be guilty of a misdemeanor and be liable to a fine of not less than one of more than five hundred dollars, or imprisonment of a term of not more than one year, or both, the fine so collected to be paid to the American Red Cross.

38

39

By Act of June 23, 1910, Congress amended Section 4 of the Red Cross Statute of 1905 so as to read:

> "* * * It shall be unlawful for any person, corporation, or association other than the American Red Cross and its duly authorized employees and agents

and the army and navy sanitary and hospital authorities of the United States for the purpose of trade or as advertisement to induce the sale of any article whatsoever or for any business or charitable purpose, to use within the territory of the United States of America and its exterior possessions the emblem of the Greek Red Cross on a white background, or any sign or insignia made or colored in imitation thereof, or the words 'Red Cross' or 'Greek Cross' or any combination of these words: Provided, however, that no person, corporation, or association that actually used
41 or whose assignor actually used the said emblem, sign, insignia or words for any lawful purpose prior to June fifth, nineteen hundred and five, shall be deemed forbidden by this Act to continue the use thereof for the same purpose and for the same class of goods * * *."

This amending act retained the same penalties that had been previously enacted into Section 4 of the original Red Cross Act.

Paragraph Five: In pursuance of the organic act of 1905 chartering the American National Red Cross "Under Government supervision" the organization became, and has con-
42 tinued to be a great charitable association, quasi-governmental in character and in respect of the duties assigned to it. Under that act the society was created as a permanent organization to carry out the purposes of the Geneva Treaty, especially to send supplies and to execute the humane objects contemplated by the treaty.

Under Section 5 of the organic act the President of the United States names not only the chairman of the Central Committee or governing body of the organization but also designates certain members of the committee, one each to be named by him from the Departments of State, War, Navy, Treasury and Justice.

43

This organic act designates the Secretary of War to have authority and supervision over the organization and its accounts. A copy of the society's annual report to the Secretary of War must also be transmitted to Congress.

In pursuance of its by-laws the President of the United States shall, upon his acceptance, be ex-officio President of the American National Red Cross. He shall preside at the annual meetings and make such appointments and perform such duties as may be prescribed.

Under Section 12 of the Act the Secretary of War was authorized to permit the Red Cross to erect and maintain on any military reservation within the jurisdiction of the United States buildings, etc.

44

The American Red Cross being a quasi-governmental organization, operates under Congressional Charter, is officered in part, at least, by governmental appointment, disburses its funds under the security of a government audit, and is designed by Presidential order for the fulfillment of certain treaty obligations into which the Government has entered. The American Red Cross owes to the Government which it serves the distinct duty of discharging all those functions for which it was created.

The American Red Cross has become and is a great charitable institution, of both national and world-wide reputation. It has experienced a tremendous growth and development throughout the years of its history. Its individual membership comprises many million persons; was over 20,000,000 at the close of the World War. It has sent its trained representatives into the United States and throughout the world to aid and succor those who have suffered from such national calamities as war, epidemics, fire, flood, volcanic eruptions, earthquakes, mine disasters and hurricanes.

45

It has expended and continues to expend hundreds of millions of dollars on behalf of stricken humanity. In one Mississippi River flood 300,000 homeless individuals were cared for by the American Red Cross.

46 *Complaint*

Paragraph Six: The Red Cross name and emblem as provided by the Geneva convention of 1864 soon became heralded throughout the world. Various manufacturers and commercial houses in the United States were quick to capitalize on its popularity and public appeal. In a few years following the conclusion of the Geneva convention, American manufacturers began to use trade-marks employing the Red Cross name and emblem, and articles of commerce bearing the Red Cross name and emblem began appearing all over the United States. This practice began as early as 1872, soon became indiscriminate, and has continued. Most of the articles so
47 sold under the Red Cross emblem and name in no way related to or suggested any article or thing that might be employed by the Red Cross in carrying out its humane and charitable work, and most of the articles now sold do not bear any relation to any article or thing that the Red Cross employs or has ever employed in its great relief work. The first registered trade-mark employing the Red Cross name and emblem covered wines, liquors, beers and mineral waters. Then followed throughout the succeeding years Red Cross marks covering such products as cambrics, hermetically sealed goods, oysters, fruits and vegetables; hydraulic hose, domestic lye, medicine for skin diseases, portland cement, bitters, flour, spices, coffee, baking powder, hard soap,
48 crackers, candy; stoves, ranges and furnaces; flavoring extracts, cough syrups, velvets and plushes; wood wool and padding; vinegar, tools, meat extracts, sausage coloring, cotton fabrics; tripe, hocks, feet and tongues; yarns and thread, kindling wood, pills, malt liquors, button fasteners; boots, shoes and shoelaces; bathrobes, white flour; rubber goods, sheep casings, salt, condensed milk, bicycles, thermometers, peanuts, stationery; pile remedies, elastic goring, antiseptic dressing, plasters, macaroni, brooms, wheeled vehicles, bottles and syringes, shears and scissors, disinfectants, windmills, spoons, whiskey; brushes, insect

powder, fishnetting; shirts, collars and cuffs; musical instruments, wiring, olive oil, advertising cabinets, surgical silk, coal, flavoring extracts, fabric hose, skin preparations, canned fish, mineral paint, cereals, laundry blueing, toilet paper, toothbrushes, beef extract; mattresses, suspensory bandages, catheters and bougies; safety pins, metal absorbents, fertilizers, washboards, and numerous other articles claimed to be of the same respective class of goods as that for which the user of the Red Cross mark employed it, such use also being claimed to be for the same purpose.

The foregoing widespread indiscriminate commercial use of the Red Cross name and emblem early resulted in 50
general confusion and misunderstanding on the part of the public concerning the activities, aims and purposes of the American Red Cross. Members of the consuming public became convinced thereby that the Red Cross manufactured or was financially backing the manufacture of, products sold under its name, and derived financial benefit therefrom. Quack medicines, even alcoholic preparations, were sold under the Red Cross name and insignia. Manufacturers repeatedly sought to enlist the Red Cross in various commercial ventures, offering division of profits in connection with the use of the society's name and emblem, such offers being occasioned by the publication and circulation of advertisements of others using the Red Cross name and emblem. 51

Paragraph Seven: On December 16, 1908, respondent (then known as Albany Perforated Wrapping Paper Company) applied at the United States Patent Office for registration of a Red Cross Trade-mark for packages of toilet paper. This mark consisting of a pictorial representation of the Greek Cross with the words "Red Cross" appearing over it in conspicuous capital letters, was granted registration on June 13, 1911. It was recited in the application for this trade-mark that the mark had been continuously used in the applicant's business since the year 1897. It was further

recited in the application that "the class of merchandise to which this trade-mark is appropriated is Class 37. Paper and stationery, and the particular description of goods comprised in said class on which the trade-mark is used is packages of toilet paper."

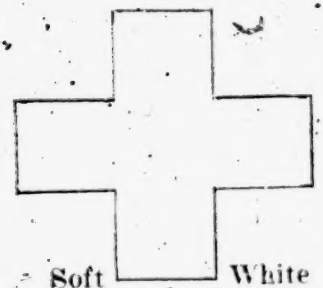
On October 4, 1933, respondent A. P. W. Paper Company, Inc., filed two applications with the United States Patent Office for registration of its Red Cross trade-mark so as to cover "Paper for Toilet Purposes—namely, paper towels —in class 37, Paper and Stationery . . ." and the containers or cartons of paper towels. It was recited that the company
53 had adopted and use the trade-mark for paper towels since September 21, 1933. Registration was granted to these applications March 13, 1934.

In the course and conduct of its aforesaid business described in Paragraph Two herein, respondent A. P. W. Paper Company, Inc., for the purpose of inducing the purchase of its said toilet tissue and paper napkins between and among the various states of the United States, has made and is now making certain advertising representations concerning its said products. In advertisements appearing in nationally known magazines of general circulation, on letterheads and invoices circulating in commerce, on wrappers of packages
54 of toilet paper and paper towels and on cases and cartons in which said products are distributed in commerce among and between the various states of the United States, in the District of Columbia, and in foreign countries, and by various other means in such commerce, respondent uses and has used, for more than five years last past, and prominently displays, and has displayed, the emblem of the American National Red Cross Society and the words "Red Cross."

On wrapping, cartons and containers for its said toilet tissue appears the following:

Complaint 55

RED CROSS



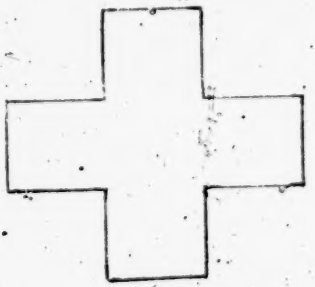
Soft White

Toilet Tissue 56

The words "Red Cross" are printed in large heavy capital letters and the facsimile of the Red Cross of the Geneva convention is produced in red coloring. The words "Toilet Tissue" below the red cross also appear in large conspicuous letters.

On wrapping, cartons and containers used for its paper towels appears the following:

RED CROSS



57

OFFICE TOWELS

Here the words "Red Cross" are printed in large red capital letters again over a heavy facsimile of the red cross of the Geneva convention. The words "office towels" below the red cross are also printed in heavy red capital letters.

58 *Complaint*

In other instances the words "Individual Fold Double Towels" are used with the Red Cross design for towels.

In other places on its wrappers and containers for its said products respondent employs and has employed a facsimile of the red cross together with the words "Red Cross." In other instances wrappers for said products contain designs of smaller red crosses.

Through the aforesaid use of the Red Cross name and emblem in advertising, trade-marking, marking, and branding its said products, as described in Paragraph Seven of the complaint herein, respondent variously represents and
59 implies and has represented and implied to customers and to prospective customers:

> That there is some connection between the American National Red Cross Society, hereinafter referred to as the Red Cross, and the respondent company; that the Red Cross is financially interested in the sale of respondent's said products and obtains a royalty or percentage thereon; that respondent's said products are endorsed, approved, or sponsored by the Red Cross, and are put on the market with the approval of the Red Cross; that respondent's said products are used by the Red Cross; that respondent's said prod-
> 60 ucts are manufactured in accordance with sanitary standards prescribed by the Red Cross, or manufactured in mills operated by the Red Cross; and that respondent company is financially connected or affiliated with and receives financial support from the Red Cross.

Paragraph Eight: The aforesaid acts and practices used and employed by respondent and the aforesaid representations and implications made and disseminated by respondent as aforesaid, are false, misleading, deceptive and confusing, for in truth and in fact respondent is not connected or

associated with the Red Cross in any way, financially, contractually or otherwise; the Red Cross has not endorsed, sponsored or approved respondent's aforesaid products sold and distributed under the Red Cross name and emblem; the Red Cross is not now engaged in and has never been engaged in any commercial enterprise with respondent company and the Red Cross is not now and has never been interested directly or indirectly in the sale of any product or products sold by respondent under a Red Cross brand or otherwise; the Red Cross does not prescribe and has never prescribed any sanitary or other standard for any article of commerce produced by respondent; no article of commerce manufactured or distributed by respondent is now or ever has been 62 sold with the approval of the Red Cross and the Red Cross has not given respondent permission to use the Red Cross name and emblem for commercial purposes.

In truth and in fact, the American Red Cross has never been engaged in any kind of commercial enterprise, directly or indirectly; has never been engaged directly or indirectly in the sale of any product; has never prescribed any sanitary or other standard for any article of commerce; no article of commerce is now or ever has been sold with the approval of the Red Cross, and the Red Cross has never given any manufacturer, wholesaler, retailer or other dealer permission to employ the Red Cross name or emblem as a trade mark or 63 otherwise in advertising, branding, labeling or marking any product.

Paragraph Nine: Respondent's aforesaid acts, practices and representations in connection with the sale of its products have had and now have the capacity and tendency to, and do, mislead and deceive purchasers and prospective purchasers of respondent's said products into the erroneous and mistaken belief that respondent has some association, connection or affiliation with the Red Cross, that respondent's products are approved, sponsored or endorsed by the

Red Cross, that the Red Cross is interested financially in the sale of respondent's products and that the use by respondent of the Red Cross name and emblem indicates that respondent is manufacturing its said products according to standards prescribed by the Red Cross. By reason of said beliefs, engendered as above stated, a substantial number of the consuming public have been and are being induced to purchase substantial quantities of respondent's said products.

Furthermore, the extension of the use of the Red Cross name and emblem so as to cover and apply to paper towels as well as toilet tissue is not and never has been a use for
65 the same purpose and the same class of goods, and is an unlawful use of said name and emblem.

Paragraph Ten: Said acts and practices of respondent as described herein are all to the prejudice of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of, and are in violation of, the Federal Trade Commission Act.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this 11th day of April, A. D., 1942, issues its complaint against said respondent.

66 NOTICE

Notice is hereby given you, A. P. W. Paper Company, Inc., a corporation, respondent herein, that the 15th day of May, A. D., 1942, at 2 o'clock in the afternoon, is hereby fixed as the time, and the offices of the Federal Trade Commission in the City of Washington, D. C., as the place, when and where a hearing will be had on the charges set forth in this complaint, at which time and place you will have the right, under said Act to appear and show cause why an order should not be entered by said Commission re-

quiring you to cease and desist from the violations of the law charged in the complaint.

You are notified and required, on or before the twentieth day after service upon you of this complaint, to file with the Commission an answer to the complaint. If answer is filed and if your appearance at the place and on the date above stated be not required, due notice to that effect will be given you. The Rules of Practice adopted by the Commission with respect to answers or failure to appear or answer (Rule IX) provide as follows:

> In case of desire to contest the proceeding the 68
> respondent shall, within twenty (20) days from the service of the complaint, file with the Commission an answer to the complaint. Such answer shall contain a concise statement of the facts which constitute the ground of defense. Respondent shall specifically admit or deny or explain each of the facts alleged in the complaint, unless respondent is without knowledge, in which case respondent shall so state.
>
> * * * * * *
>
> Failure of the respondent to file answer within the time above provided and failure to appear at the time and place fixed for hearing shall be deemed to 69
> authorize the Commission, without further notice to respondent, to proceed in regular course on the charges set forth in the complaint.
>
> If respondent desires to waive hearing on the allegations of fact set forth in the complaint and not to contest the facts, the answer may consist of a statement that respondent admits all the material allegations of fact charged in the complaint to be true. Respondent by such answer shall be deemed to have waived a hearing on the allegations of fact set forth in said complaint and to have authorized the Com-

mission, without further evidence, or other intervening procedure, to find such facts to be true, and if in the judgment of the Commission such facts admitted constitute a violation of law or laws as charged in the complaint, to make and serve findings as to the facts and an order to cease and desist from such violations. Upon application in writing made contemporaneously with the filing of such answer, the respondent, in the discretion of the Commission, may be heard on brief, in oral argument, or both, solely on the question as to whether the facts so admitted

71 constitute the violation or violations of law charged in the complaint.

IN WITNESS WHEREOF, the Federal Trade Commission has caused this, its complaint, to be signed by its Secretary, and its official seal to be hereto affixed, at Washington, D. C., this 11th day of April, A. D., 1942.

By the Commission.

OTIS B. JOHNSON
Otis B. Johnson,
Secretary.

72

Order Extending Time for Filing Answer

UNITED STATES OF AMERICA

BEFORE

FEDERAL TRADE COMMISSION

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 29th day of April, A. D. 1942.

Commissioners:

WILLIAM A. AYRES, Chairman,
GARLAND S. FERGUSON,
CHARLES H. MARCH,
EWIN L. DAVIS,
ROBERT E. FREER.

Docket No. 4747

In the Matter
of
A. P. W. PAPER COMPANY, INC.

This matter coming on to be heard by the Commission upon request of counsel for respondent A. P. W. Paper Company, Inc., for an extension of time from May 3, 1942, to May 23, 1942, within which to file answer to the complaint herein, and the Commission having duly considered said request and the record herein, and being now fully advised in the premises:

IT IS ORDERED that the time within which said respondent A. P. W. Paper Company, Inc., may file answer to the complaint herein be, and the same hereby is, extended from May 3, 1942, to May 23, 1942.

By the Commission.

OTIS B. JOHNSON
Otis B. Johnson,
Secretary.

76

Answer

UNITED STATES OF AMERICA

BEFORE

FEDERAL TRADE COMMISSION

Docket No. 4747

In the Matter

of

77

A. P. W. PAPER COMPANY, INC., a corporation.

The respondent, A. P. W. Paper Company, Inc., by its attorneys, Sullivan & Cromwell, answers the complaint herein as follows:

1. Admits the allegations of Paragraph One.

2. Admits the allegations of Paragraph Two.

78 3. Answers the allegations of Paragraph Three as follows:

Denies that the Conventions of 1864 or 1906 referred to in the complaint are today existing conventions or agreements, and alleges that the same were expressly superseded by the 34th Article of the Convention of 1929 referred to in the complaint. Denies on information and belief that the Convention of 1864 was known as the Red Cross Convention. Denies the allegation that the Convention of 1906 "has never been denounced by the United States either in whole or in part", and alleges that the United States ratified the Convention of 1929, which by its terms rescinded and replaced

the Convention of 1906. Denies that any of the allegations of the complaint with respect to the Convention of 1864 or the Convention of 1906 are relevant or material to any issue contained in the complaint or any issue within the jurisdiction or competency of the Federal Trade Commission. Further, this respondent refrains from answering the allegations as to the contents of said Conventions, as said Conventions were made part of the Statutes at Large of the United States at the time of their ratification by the United States Senate, and, hence, are public documents, and judicial notice must be taken of their contents; the 1864 Convention, as ratified, appearing at 22 Statutes at Large, page 940, and 80
the 1906 Convention, as ratified, appearing at 35 Statutes at Large, Part 2, page 251.

Admits that the United States became a party signatory to the Convention of July 27, 1929, stated to be "for the amelioration of the condition of the wounded and the sick of armies in the field", which Convention was ratified on January 16, 1932 and proclaimed August 4, 1932. Denies that this Convention broadened and made more definite existing treaty provisions, as alleged in the complaint; and alleges that the said Convention repealed and replaced the theretofore-existing Conventions. Denies the allegation that the United States in 1906 and 1932, respectively, obligated 81
itself by treaty to enact legislation prohibiting commercial use and exploitation of the Red Cross name and emblem; and further denies that the said allegation raises any issue that is justiciable or is within the jurisdiction or competency of the Federal Trade Commission or is relevant or material to any issue contained in the complaint. Respondent refers to the provisions of the Convention of 1929, as ratified by this Government and as printed in 47 Statutes at Large, Part 2, page 2074, which is a public document and of which judicial notice must be taken, in lieu of answering the allegations of the complaint as to the contents of said Convention.

Answer

Admits that the United States enacted a law on June 20, 1936 which, if and in so far as this Government had any treaty obligation with respect to the commercial use of the Swiss Coat of Arms, recognized that obligation; but denies that the complaint correctly sets forth the provisions of said statute and refers to the official text, appearing in 49 Statutes at Large, Part 1, page 1557, and calls particular attention to the provision omitted from the complaint which reads as follows:

> "Provided that no person, corporation, or association that actually used or whose assignors actually used a design or insignia identical with or similar to that described herein for any lawful purpose for ten years next preceding the effective date of this act shall be deemed forbidden to continue the use thereof for the same purpose."

4. Answers the allegations of Paragraph Four as follows:

Answering the first three subparagraphs, refers to the statutes therein referred to for their provisions. Denies knowledge or information sufficient to form a belief with respect to the allegations of the fourth subparagraph.

Answering the fifth and sixth subparagraphs, refers for its terms to the Act of Congress of January 5, 1905 incorporating "The American National Red Cross"; and specifically calls attention to the error in the sixth subparagraph in omitting from those excluded from the prohibitions of Section 4 those "now lawfully entitled to use the sign of the Red Cross".

Answering subparagraphs seventh and eighth, admits the allegation that Congress, by Act of June 23, 1910, amended Section 4 of the aforesaid Statute of January 5, 1905.

5. Admits the allegations of Paragraph Five, except that in so far as said paragraph refers to statutes and other pub

lic documents, respondent refers to such statutes or public documents for their terms; and except as to the allegation that The American Red Cross is a "quasi-governmental Organization", as to which respondent has no knowledge or information.

6. Answering Paragraph Six of the complaint, alleges, upon information and belief, that the Red Cross is a symbol that has been used for centuries and was in common use at the time of its adoption by the Convention of 1864; that the Convention of 1864 and its adoption of the Red Cross as a symbol were little known in the United States until many 86
years after the event, and that the first Red Cross Society was not formed in this country until 1881 and for many years thereafter it had but a small membership and was little known; and otherwise denies knowledge or information sufficient to form a belief with respect to the allegations contained in said paragraph.

7. Answers the allegations of Paragraph Seven as follows:

Admits the allegations contained in the first and second subparagraphs.

Admits the allegations in the first sentence of the third 87
subparagraph except that respondent denies that the manufacture or sale of paper napkins is or has been part of its business. Admits that in advertisements appearing in nationally known magazines of general circulation, on letterheads and invoices circulating in commerce, on wrappers of packages of toilet paper and paper towels and on the cases and cartons in which said products are distributed in commerce among and between the various States of the United States and in the District of Columbia respondent uses and has used for more than five years last past its aforesaid trademarks lawfully and properly, as it is entitled and

88 authorized to do under the laws of the United States; and otherwise denies the allegations of the second sentence of the third subparagraph.

Denies that the allegations with respect to what appears on the wrappings, cartons and containers for respondent's toilet tissue, state the facts correctly, and alleges in that connection that there is also printed thereon the following:

> "Trademark Red Cross & Label Design Registered U. S. Patent Office by A. P. W. Paper Co., Inc., Manufacturer."

89 Denies that respondent now uses or has used for more than two years last past wrappings, cartons or containers for office towels; and alleges that when such cartons were used by respondent there appeared thereon the words "Registered in United States Patent Office" and also "A. P. W." Respondent further alleges that upon its containers for "individual fold double towels" there also appears "Product of A. P. W., Albany, New York" and "Trademark Red Cross (words and symbol) Registered United States Patent Office by A. P. W. Paper Company, Inc., Manufacturers".

Admits the allegations of the sixth subparagraph that on wrappers and containers for various of its products it 90 employs and has employed its Red Cross trademarks, but denies that the same have appeared alone; and in that connection alleges that it has used its aforesaid trademarks on its wrappers and containers only as it was entitled and authorized to do by the laws of the United States.

Denies each and every allegation contained in the last subparagraph.

8. Answers Paragraph Eight as follows:

Denies that any acts or practices used or employed by the respondent or any representations or implications made or disseminated by respondent are false, misleading, decep-

tive or confusing; and admits the remaining allegations of the first subparagraph.

As to the allegations contained in the second subparagraph, respondent has no means of knowing whether or not they are true, but admits them for the purposes of this case.

9. Denies each and every allegation contained in Paragraph Nine.

10. Denies each and every allegation contained in Paragraph Ten. 92

FOR A FURTHER ANSWER TO THE COMPLAINT AND EACH PARAGRAPH THEREOF

11. Respondent alleges that the question of what obligation, if any, the United States has under the Convention of 1929 is solely one for the Congress, and the question is not justiciable and is not within the jurisdiction of the Federal Trade Commission; that the Congress has duly determined by statute what use of the emblem of the Greek red cross and the words "Red Cross" is authorized and what use thereof is unauthorized; that the Federal Trade Commission has no 93
jurisdiction to require respondent or any other person or corporation to cease and desist from the use authorized by Congress or to show cause why he should not be required so to cease and desist; that respondent actually used the emblem of the Greek red cross on a white ground and the words "Red Cross" lawfully as a trademark on certain of its manufactured articles prior to January 5, 1905, and since that date has continued to use said symbol and words only for the same purpose and for the same class of goods, and there is no allegation of fact in the complaint that respondent has done otherwise; that the aforesaid use by respondent of the em-

94 *Answer*

blem of the Greek red cross on a white ground and of the words "Red Cross" has never been prohibited by law, but, on the contrary, has been and is expressly authorized by the aforesaid Act of Congress of June 23, 1910; that the complaint sets forth no issue within the jurisdiction of the Federal Trade Commission, and that the Federal Trade Commission is wholly without jurisdiction in this proceeding.

A. P. W. PAPER COMPANY, INC.

By Dwight G. W. Hollister,
President.
Foot of Bridge Street,
Albany, N. Y.

95

SULLIVAN & CROMWELL,
Attorneys for Respondent,
48 Wall Street
New York, N. Y.

96

Order Appointing Trial Examiner and Fixing Time and Place for Taking Testimony

97

UNITED STATES OF AMERICA

BEFORE

FEDERAL TRADE COMMISSION

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 5th day of June, A. D. 1942.

98

Commissioners:

WILLIAM A. AYRES, Chairman,
GARLAND S. FERGUSON,
CHARLES H. MARCH,
EWIN L. DAVIS,
ROBERT E. FREER.

Docket No. 4747.

In the Matter

of

99

A. P. W. PAPER COMPANY, INC.

This matter being at issue and ready for the taking of testimony, and pursuant to authority vested in the Federal Trade Commission, under an Act of Congress (38 Stat. 717; 15 USCA, Section 41),

IT IS ORDERED that Miles J. Furnas, a trial examiner of this Commission, be and he hereby is designated and ap

100 *Order Appointing Trial Examiner and Fixing Time and Place for Taking Testimony*

pointed to take testimony and receive evidence in this proceeding and to perform all other duties authorized by law;

IT IS FURTHER ORDERED that the taking of testimony in this proceeding begin on Saturday, June 13, 1942, at ten o'clock in the forenoon of that day (eastern standard time) in Court Room No. 2, Federal Building, Albany, N. Y.

Upon completion of testimony for the Federal Trade Commission, the trial examiner is directed to proceed immediately to take testimony and evidence on behalf of the respondent.
101 The trial examiner will then close the case and make his report upon the evidence.

By the Commission:

OTIS B. JOHNSON
Otis B. Johnson,
Secretary.

102

Order Extending Time for Filing Brief in Support of Allegations of the Complaint

UNITED STATES OF AMERICA

BEFORE

FEDERAL TRADE COMMISSION

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 25th day of January, A. D. 1943.

Commissioners:

GARLAND S. FERGUSON, Chairman.
CHARLES H. MARCH,
EWIN L. DAVIS.
WILLIAM A. AYRES.
ROBERT E. FREER.

Docket No. 4747

In the Matter

of

A. P. W. PAPER COMPANY, INC., a corporation.

This matter coming on to be heard by the Commission upon the request of counsel for the Commission for an extension of time from December 28, 1942 to January 25, 1943, within which to file brief in support of the allegations of the complaint, and the Commission having duly considered the said request and the record herein, and being now fully advised in the premises:

IT IS ORDERED that the time within which brief may be filed in support of the allegations of the complaint be, and the same hereby is, extended from December 28, 1942 to January 25, 1943.

By the Commission.

OTIS B. JOHNSON
Otis B. Johnson,
Secretary.

106 **Order Extending Time for Filing Brief in Opposition to the Allegations of the Complaint**

UNITED STATES OF AMERICA

BEFORE

FEDERAL TRADE COMMISSION

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 6th day of February, A. D. 1943.

Commissioners:

GARLAND S. FERGUSON, Chairman,
107 CHARLES H. MARCH,
EWIN L. DAVIS,
WILLIAM A. AYRES,
ROBERT E. FREER.

Docket No. 4747

In the Matter

of

A. P. W. PAPER COMPANY, INC., a corporation.

108 This matter coming on to be heard by the Commission upon the request of counsel for the respondent for an extension of time from February 14, 1943, to March 6, 1943, within which to file brief in opposition to the allegations of the complaint, and the Commission having duly considered the said request and the record herein, and being now fully advised in the premises;

IT IS ORDERED that the time within which brief may be filed in opposition to the allegations of the complaint be, and the same hereby is, extended from February 14, 1943, to March 6, 1943.

By the Commission.

OTIS B. JOHNSON
Otis B. Johnson,
Secretary.

of

109

Notice

UNITED STATES OF AMERICA

BEFORE THE

FEDERAL TRADE COMMISSION, 88

Docket No. 4747

In the Matter

of

110

A. P. W. PAPER COMPANY, INC.

You will please take notice that the time and place for

FINAL ARGUMENT

has been set for Wednesday, March 31, 1943, at 2 p. m., in the Hearing Room, Federal Trade Commission Building, Washington, D. C.

You may appear and be heard if you so desire.

111

By direction of the Commission:

OTIS B. JOHNSON,
Secretary.

To: Sullivan & Cromwell,
48 Wall St.,
New York, N. Y.

Dated: March 11, 1943

112 **Findings as to the Facts and Conclusion**

UNITED STATES OF AMERICA

BEFORE THE

FEDERAL TRADE COMMISSION

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 7th day of January, A. D. 1944.

113

Commissioners:

ROBERT E. FREER, Chairman,
GARLAND S. FERGUSON,
CHARLES H. MARCH,
EWIN L. DAVIS,
WILLIAM A. AYRES.

Docket No. 4747

In the Matter

of

114 A. P. W. PAPER COMPANY, INC., a corporation.

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on April 11, 1942, issued and subsequently served its complaint in this proceeding upon the respondent, A. P. W. Paper Company, Inc., a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that Act. After the filing of respondent's answer, testimony and other evidence in support of and in opposition to the allegations of the complaint were intro-

duced before a trial examiner of the Commission theretofore duly designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the complaint, answer, testimony and other evidence, report of the trial examiner upon the evidence and the exceptions to such report, briefs in support of and in opposition to the complaint, and oral argument; and the Commission, having duly considered the matter, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion based thereon:

FINDINGS AS TO THE FACTS

Paragraph One: The respondent, A. P. W. Paper Company, Inc., is a corporation organized and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at the foot of Bridge Street, Albany, New York. In addition to its main office in Albany, respondent maintains a number of branch offices in various cities throughout the United States. The company was originally incorporated in 1877 under the name of Albany Perforated Wrapping Paper Company, but in 1930 the corporate name was changed to A. P. W. Paper Company, Inc. The corporation is engaged in the manufacture, sale, and distribution of toilet tissues and paper towels.

Paragraph Two: In the course and conduct of its business, respondent causes and has caused its products, when sold, to be transported from its principal place of business in the State of New York to purchasers thereof located in various other states of the United States and in the District of Columbia. Respondent maintains and has maintained a

118 *Findings as to the Facts and Conclusion*

course of trade in its products in commerce among and between the various states of the United States and in the District of Columbia.

Paragraph Three: Among the various brands of toilet tissues and paper towels manufactured and sold by respondent are certain brands designated by it as "Red Cross Toilet Tissue" and "Red Cross Towels." The toilet tissue was placed on the market by respondent in 1897 and the paper towels in 1933. Both products have been and are widely advertised in periodicals having nation-wide circula-
119 tion. On each package or roll of toilet tissue and towels the words "Red Cross" are prominently displayed, and in connection with the name there is also prominently displayed a Greek red cross. Both the trade name and the cross are also featured in respondent's magazine advertisements, and on respondent's letterheads there appear the words "Makers of Red Cross Towels and Tissue," the words "Red Cross" being immediately followed by a red cross similar to that which appears on the packages and in the advertisements. Both the trade name and the mark of the cross have been registered by respondent in the United States Patent Office.

Paragraph Four: The organization known as the Red
120 Cross had its beginning in August, 1864, when diplomats representing a number of European nations met in Geneva, Switzerland, for the purpose of drafting a treaty looking to the alleviation of the suffering of soldiers wounded on the battlefield. Among the articles adopted by the convention was Article VII, which provided that:

> "A distinctive and uniform flag shall be adopted for hospitals, ambulances and evacuations. It must, on every occasion, be accompanied by the national flag. An armbadge (brassard) shall also be allowed for individuals neutralized, but the delivery thereof shall be left to military authority.

"The flag and the arm-badge shall bear a red cross on a white ground."

Some two years after the Geneva convention, certain individuals in the United States who had followed with interest the work of the convention organized in New York City an association known as "The American Association for the Relief of the Misery of Battlefields," which it was hoped would be the beginning of a permanent Red Cross organization in this country. The Association adopted as its emblem the same one as that which had been adopted by the Geneva convention, that is, a Greek red cross on a white ground. 122
The United States, however, had not at that time ratified the treaty of Geneva and the Association remained active for only about two years.

Paragraph Five: In July, 1881, there was incorporated, under the laws of the District of Columbia, an association designated "The American Association of the Red Cross." One of the principal organizers of the Association was Miss Clara Barton, who had, since the Geneva convention, been very active in the movement to effect a permanent Red Cross organization in the United States and to obtain the ratification by this country of the Geneva treaty. In the meantime, 123
there had been held at Geneva in 1868 a second convention, which extended the articles adopted by the original convention so as to include naval warfare. Among the objects of the Association, as set forth in the articles of incorporation, were the following:

> "1st. To secure by the United States the adoption of the treaty of August 22, 1864, between Italy, Baden, Belgium, Denmark, Holland, Spain, Portugal, France, Prussia, Saxony, Wurtemberg, and the Federal Council of Switzerland.

* * *

124 *Findings as to the Facts and Conclusion*

"3d. To organize a system of national relief and apply the same in mitigating the sufferings caused by war, pestilence, famine and other calamities."

Paragraph Six: The treaty of Geneva was formally ratified by the United States in March, 1882, and in April, 1893, the Red Cross organization which had been incorporated in 1881 was reincorporated under the laws of the District of Columbia under the name "The American National Red Cross." During the period of time which had intervened between the original incorporation in 1881 and the
125 reincorporation in 1893, the organization had been very active, particularly with respect to the relief of distress caused by a series of calamities, including the Mississippi floods of 1882, the Ohio floods of 1883, the Mississippi cyclones of 1883, the Ohio and Mississippi floods of 1884, the Texas drought of 1886, the Charleston earthquake of 1886, the Florida yellow-fever epidemic of 1888, and the Johnstown disaster of 1889.

Paragraph Seven: On June 6, 1900, the organization was incorporated under the same name (The American National Red Cross) by Act of Congress (31 Stat. 277-289), and on January 5, 1905, it was reincorporated by Congress under
126 the same name (33 Stat. Part 1, pp. 599-602). It appears that the principal purpose of the reincorporation was to provide more definitely for the supervision of the organization by the Federal Government. Under the Act of 1905, six of the eighteen members of the Central Committee, which is the governing body of the Red Cross, are appointed by the President of the United States. One of the six members so appointed is designated by the President as Chairman, and one of the six is named by the President from each of the Departments of State, War, Navy, Treasury, and Justice. The organization is required to transmit to the Secretary of War each year a full report of its receipts and expenditures

for the preceding fiscal year, which report is audited by the War Department and a copy transmitted by that Department to Congress. The by-laws of the organization provide that the President of the United States shall, upon his acceptance, be *ex officio* president of the organization. 127

Paragraph Eight: From the time of its first incorporation under the laws of the District of Columbia in 1881 down to the present time, the American Red Cross has not only used the words "Red Cross" as a part of its name and in connection with its various activities, but has also used the emblem adopted by the Geneva convention, the Greek red cross on a white ground. All of the Acts of Congress having to do with the organization have recognized this emblem and have provided penalties for its misuse. Thus, Section 4 of the Act of 1900 provided: 128

> "That from and after the passage of this Act it shall be unlawful for any person within the jurisdiction of the United States to falsely and fraudulently hold himself out as, or represent or pretend himself to be a member of or an agent for the American National Red Cross for the purpose of soliciting, collecting, or receiving money or material; or for any person to wear or display the sign of the red cross, or any insignia colored in imitation thereof, for the fraudulent purpose of inducing the belief that he is a member of, or an agent for the American National Red Cross. If any person violates the provisions of this section he shall be guilty of a misdemeanor, and shall be liable to a fine of not less than one nor more than five hundred dollars, or imprisonment for a term not exceeding one year, or both, for each and every offense. The fine so collected shall be paid to the American National Red Cross. * * *" (31 Stat. 279) 129

130 *Findings as to the Facts and Conclusion*

The corresponding section in the Act of 1905 was as follows:

> "That from and after the passage of this Act it shall be unlawful for any person within the jurisdiction of the United States to falsely and fraudulently hold himself out as, or represent or pretend himself to be, a member of, or an agent for, the American National Red Cross, for the purpose of soliciting, collecting, or receiving money or material; or for any person to wear or display the sign of the Red Cross, or any in-
> 131 signia colored in imitation thereof for the fraudulent purpose of inducing the belief that he is a member of, or an agent for, the American National Red Cross. Nor shall it be lawful for any person or corporation, other than the Red Cross of America, not now lawfully entitled to use the sign of the Red Cross, hereafter to use such sign or any insignia colored in imitation thereof for the purposes of trade or as an advertisement to induce the sale of any article whatsoever. If any person violates the provisions of this section, he shall be guilty of a misdemeanor and shall be liable to a fine of not less than one nor more than five hun-
> 132 dred dollars, or imprisonment for a term not exceeding one year, or both, for each and every offense. The fine so collected shall be paid to the American National Red Cross." (33 Stat. Part 1, pp. 600-601)

In 1910 this section was further amended by Congress to read as follows:

> "That from and after the passage of this Act it shall be unlawful for any person within the jurisdiction of the United States to falsely or fraudulently hold himself out as or represent or pretend himself to be a member of or an agent for the American National Red Cross for the purpose of soliciting, collecting, or re-

ceiving money or material; or for any person to wear or display the sign of the Red Cross or any insignia colored in imitation thereof for the fraudulent purpose of inducing the belief that he is a member of or an agent for the American National Red Cross. It shall be unlawful for any person, corporation, or association other than the American National Red Cross and its duly authorized employees and agents and the Army and Navy sanitary and hospital authorities of the United States for the purpose of trade or as an advertisement to induce the sale of any article whatsoever or for any business or charitable purpose to 134
use within the territory of the United States of America and its exterior possessions the emblem of the Greek Red Cross on a white ground, or any sign or insignia made or colored in imitation thereof or of the words 'Red Cross' or 'Geneva Cross' or any combination of these words: Provided, however, That no person, corporation, or association that actually used or whose assignor actually used the said emblem, sign, insignia, or words for any lawful purpose prior to January fifth, nineteen hundred and five, shall be deemed forbidden by this Act to continue the use thereof for the same purpose and for the same class of goods. If any person violates the provision of this 135
section, he shall be deemed guilty of a misdemeanor and, upon conviction in any federal court, shall be liable to a fine of not less than one or more than five hundred dollars, or imprisonment for a term not exceeding one year, or both, for each and every offense." (36 Stat. Part I, p. 604.)

Paragraph Nine: From a relatively small membership in 1881 the American Red Cross has grown until it now numbers fifteen million adult members and fourteen million junior members. It has an active chapter in practically

every county in the United States. Its reputation as a great charitable institution is of world-wide, as well as national, scope. It has expended and continues to expend many millions of dollars annually on behalf of stricken humanity. In one Mississippi River flood, it cared for 300,000 homeless individuals. It has sent its trained representatives throughout the world to aid those suffering from such calamities as war, epidemics, fire, flood, volcanic eruptions, earthquakes, mine disasters, and hurricanes. It is particularly active in time of war, now having representatives attached to every American Army task force throughout the world. Both the name
137 "Red Cross" and the emblem of the Greek red cross on a white ground have long been familiar to the American public and are associated in the minds of the public with the Red Cross organization.

Paragraph Ten: The Commission finds that the use by respondent of the words "Red Cross" and of the mark of the Greek red cross to designate its products has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public, in that such name and mark represent or imply that respondent's products are sponsored, endorsed, or approved by the Red Cross; that the Red Cross is financially interested in the sale of the products; that the
138 products are used by the Red Cross; that the products are manufactured in accordance with sanitary standards set up by the Red Cross; or that there is some other connection between the products and the Red Cross. Not only are these, in the opinion of the Commission, reasonable inferences to be drawn from the use of the name and mark, but the record affirmatively shows that the name and mark are in fact so understood and interpreted by many members of the public. Twenty-nine members of the public testified at the hearings, and it was stipulated between counsel for the Commission and counsel for respondent that if twenty-five other prospective public witnesses had been introduced their testimony

would have been substantially the same as the testimony of those who were actually introduced. Of the twenty-nine witnesses who testified, some fifteen, upon examining samples of respondent's products and advertising, stated that they would understand from the trade name and mark that there was some connection between the products and the Red Cross organization, although they did not agree as to the exact nature of such connection. Some interpreted the name and mark as implying that the products were sponsored, endorsed, or approved by the Red Cross; others, that the products conformed with sanitary standards set up by the Red Cross; others, that the products were used by the Red Cross, 140 etc.

There is no connection of any kind between respondent's products and the Red Cross organization. In fact, the Red Cross has no connection with any business or commercial enterprise. It does not sponsor, endorse, or approve any articles of merchandise nor derive any benefit from the sale thereof. It does not set up standards, sanitary or otherwise, for commercial products. The work and interests of the organization are solely of a charitable nature.

Paragraph Eleven: While there appear on respondent's products, in addition to the name "Red Cross" and the mark of the cross, other words stating that the products are 141 made by respondent and that the trade name and mark are registered in the United States Patent Office, the Commission is of the opinion and finds that these additional words do not serve to correct the erroneous and misleading impression created through the use of the trade name and mark.

Paragraph Twelve: It is insisted by respondent that the use of a red cross as an emblem or insignia dates back several centuries and that such use long antedated the Red Cross organization. The record indicates, however, that the use of a red cross in the particular form and coloration here

involved—a Greek red cross on a white ground—had its origin in the Geneva convention of 1864. The emblem was formed by reversing the colors of the flag of Switzerland. The red cross used prior to that time was usually in the form of an ecclesiastical cross or in some other form differing from the Greek red cross.

Paragraph Thirteen: It is further urged by respondent that the provision of the Act of Congress of 1910 reading,

> "No person, corporation, or association that actually
> 143 used or whose assignor actually used the said emblem, sign, insignia, or words for any lawful purpose prior to January fifth, nineteen hundred and five, shall be deemed forbidden by this Act to continue the use thereof for the same purpose and for the same class of goods."

constitutes a bar to this proceeding. The Commission is of the opinion, however, that this position is unsound. Among the considerations leading the Commission to this view is that the Act in question is a penal statute. The primary purpose of the quoted provision was to save those coming within its terms from the penalties provided by this particu-
144 lar Act.

Moreover, the provision expressly states that the use must be for a "lawful purpose." At the time of the passage of this Act the legal concept with respect to unfair trade practices was much more restricted than at the present time. Then the legality of a trade practice depended largely, if not entirely, upon its effect on competition, the effect upon the general public being given little, if any, consideration. Since that time there has been enacted the Federal Trade Commission Act, which recognizes the interest of the general public in unfair trade practices. Particularly is this true under the 1938 amendment to the Federal Trade Commis-

sion Act, which prohibits unfair and deceptive acts and practices in commerce, irrespective of their effect on competition:

Whatever effect the provision relied upon by respondent might have in a proceeding based upon the 1910 statute, or in litigation involving conflicting trade-mark claims between private parties, the Commission is of the opinion that the provision has no application in a proceeding under the Federal Trade Commission Act, where the principal inquiry is as to the effect of the Red Cross name and mark upon the general public.

146

No finding is made as to whether the paper towels made by respondent are of the same class of goods as its toilet tissue.

Paragraph Fourteen: The acts and practices of the respondent have the tendency and capacity to mislead and deceive a substantial portion of the public into the erroneous and mistaken belief that respondent's products are sponsored, endorsed, or approved by the Red Cross; that the Red Cross is financially interested in the sale of the products; that the products are used by the Red Cross; that the products are manufactured in accordance with sanitary standards set up by the Red Cross; or that there is some other connection between the products and the Red Cross, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of such products as a result of the erroneous and mistaken belief so engendered.

147

Conclusion

The acts and practices of the respondent as herein found are all to the prejudice of the public and constitute unfair

148 *Findings as to the Facts and Conclusion*

and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

By the Commission.

R. E. FREER
R. E. Freer,
Chairman.

Dated this 7th day of January, A. D. 1944.

149 ATTEST:

A. N. ROSS
A. N. Ross,
Acting Secretary.

150

Order to Cease and Desist

151

UNITED STATES OF AMERICA

BEFORE

FEDERAL TRADE COMMISSION

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 7th day of January, A. D. 1944.

Commissioners:

152

ROBERT E. FREER, Chairman,
GARLAND S. FERGUSON,
CHARLES H. MARCH,
EWIN L. DAVIS,
WILLIAM A. AYRES.

Docket No. 4747

In the Matter

of

A. P. W. PAPER COMPANY, INC.,
a corporation.

153

This matter having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony and other evidence taken before a trial examiner of the Commission theretofore duly designated by it, report of the trial examiner upon the evidence and the exceptions to such report, briefs in support of and in opposition to the complaint, and oral argument; and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of the Federal Trade Commission Act:

154 *Order to Cease and Desist*

IT IS ORDERED that the Respondent, A. P. W. Paper Company, Inc., a corporation, and its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of respondent's toilet tissues and paper towels in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the words "Red Cross" or any abbreviation or simulation thereof, either alone or in combination or connection with any other word or words, to designate, describe, or refer to respondent's products.

155

2. Using or displaying on respondent's products or in any advertisement of such products the mark of a Greek red cross, or any other mark, emblem, sign, or insignia simulating or resembling such cross.

3. Representing in any manner or by any means, directly or by implication, that respondent's products are sponsored, endorsed, or approved by the Red Cross; that the Red Cross is financially interested in the sale of said products; that said products are used by the Red Cross; that said products are manufactured in accordance with sanitary standards set up by the Red Cross; or that there is any other connection between said products and the Red Cross.

156

IT IS FURTHER ORDERED that the respondent shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with this order.

By the Commission.

A. N. Ross
A. N. Ross,
Acting Secretary.

Transcript of Hearing, Dated June 13th, 1942, Albany, New York

BEFORE THE

FEDERAL TRADE COMMISSION

Docket No. 4747

In the Matter

of

A. P. W. PAPER COMPANY, INC., a corporation.

Court Room No. 2, Federal Building
Albany, New York,
Saturday, June 13, 1942.

Met, pursuant to notice, at 10:00 o'clock a.m., E. S. T.

Before:

MILES J. FURNAS, Trial Examiner.

Appearances:

MARSHALL MORGAN, Esq. (Washington, D. C.), attorney for the Federal Trade Commission.

SULLIVAN & CROMWELL (48 Wall Street, New York, N. Y.) by

E. H. SYKES, Esq., and

Mr. DWIGHT G. W. HOLLISTER (Albany, New York), President of A. P. W. Paper Company, appearing on behalf of the respondent.

PROCEEDINGS

Trial Examiner Furnas: Miss Reporter, you will note the convening of the hearing in the proceeding of the Federal Trade Commission against A. P. W. Paper Company,

160 *Colloquy*

Inc., a corporation, Docket No. 4747, as scheduled by order of the Federal Trade Commission for hearing in the City of Albany, State of New York, in Court Room No. 2, Federal Building, at 10 a.m. on the 13th day of June, 1942.

Mr. Marshall Morgan is appearing as counsel for the Commission.

Mr. E. H. Sykes, of the firm of Sullivan & Cromwell, 48 Wall Street, New York, New York, and Mr. James T. Forrest, of the firm of Fraser, Myers & Manley, of 165 Broadway, New York, New York, appear for the respondent.

Only those having regularly entered their appearances
161 will be permitted to participate in this proceeding.

The same decorum, gentlemen, will be exercised by those in attendance in this proceeding as is exercised in the United States District Courts.

There will be no smoking or unnecessary talking in this room during this proceeding.

Miss Reporter, you are instructed by the Examiner that all matters transpiring in this proceeding will be on the record unless otherwise ordered by the Trial Examiner. Anyone desiring to make a statement off the record must first request permission of the Trial Examiner to do so.

You are also instructed, Miss Reporter, that if it is the
162 desire of counsel an exception will be granted on behalf of any party to this proceeding who has sustained an adverse ruling to an objection or motion made by the Trial Examiner.

If you gentlemen desire that.

Mr. Sykes: That is, that an exception is granted without noting the exception on the record?

Trial Examiner Furnas: That is my object in making that statement.

The respondent in this proceeding is charged with having violated Section 5 of the Federal Trade Commission Act.

Anyone desiring a copy of this proceeding will make arrangements with the reporter here, who is not in the employ of the Government or an employee of the Federal Trade Commission. The price, I think, is established by contract, and I feel certain in saying that you will be treated to whatever that contract provides.

Now, Miss Reporter, you will note that we will go off the record for a moment.

(There was a short discussion off the record.)

Trial Examiner Furnas: On the record. Gentlemen, what is your further pleasure? 164

Mr. Morgan: I would like to call Mr. Hollister as the Commission's first witness.

DWIGHT G. W. HOLLISTER was called as a witness for the Federal Trade Commission, and having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Morgan:

Q. You are Mr. Dwight G. W. Hollister? A. I am.

Q. You are, as I understand, president of the respondent corporation? A. That is right. 165

Q. That is, the A. P. W. Paper Company? A. Yes.

Q. And that company is located here in Albany? A. Yes.

Q. And conducts a manufacturing business here? A. Yes.

Q. What products does that company manufacture? A. We manufacture toilet paper and paper towels.

Q. Just those two items? A. Yes.

Q. I see. Those products are sold and distributed, as I understand it, all over the United States?

166 *Dwight G. W. Hollister—For the Commission—Direct*

Mr. Sykes: That all appears in the admissions of the pleadings. There is no issue on that.

Mr. Morgan: Just a moment. Your Honor, this witness is the president of a big corporation, and I insist he is entitled to a correlated statement. I do not like to jump from the complaint to the answer to see what the facts in the case are.

Trial Examiner Furnas: You may answer. All right. Proceed.

The Witness: May I ask you to repeat the question again? I did not get the question.

167

By Mr. Morgan:

Q. These two products which you enumerated that you manufacture are sold by your company and are shipped from here all over the United States? A. Yes; may I answer that in this way?

Q. In your own way, sir. A. I say we are engaged in interstate commerce. There might be a State or so we do not ship to, but in general, we are in interstate commerce. And may I enlarge on a previous answer?

Trial Examiner Furnas: Answer in your own way.

168

The Witness: You asked me earlier what we make. I said toilet paper and towels.

Those are essential products, but since this is a proceeding, I would like to mention that we do make a few specialties such as inter-leafing tissue that is not sold as toilet tissue or towels. It is paper. It is in large rolls.

We have made very small amounts of what we call morticians' sheet. It is a large piece of paper they use in morgues to cover corpses. It is not a very large volume, but I want to be sure I am giving all the information.

Then, we also sell occasionally tissue paper and towel paper in jumbo rolls which other manufacturers convert into finished products. That jumbo roll business is not trade-marked business at all. Just so much paper.

Is that all right?

By Mr. Morgan:

Q. Yes. Your company, Mr. Hollister, I believe is quite an old one? A. Yes, sir.

Q. Incorporated in 1870? A. The company was originally incorporated on July 20, 1877, under the name of Albany Perforated Wrapping Paper Company. On June 9, 1930, the name was changed to A. P. W. Paper Company, which was the name under which it had been known for many years, but the true corporate title prior to the change of the name was Albany Perforated Wrapping Paper Company, Inc. 170

Q. Your products, Mr. Hollister, are sold under various trade names, I take it? A. Yes. We have several trade names.

Q. Some of your products are sold under what we might term the Red Cross mark or trade-mark? 171

Mr. Sykes: I want to put on the record a formal objection.

Trial Examiner Furnas: What is that?

Mr. Sykes: It appears from the complaint that the only charge that is made in this proceeding is that of the use of a symbol and a name, the symbol being the Red Cross symbol, and the name being Red Cross.

There has been a representation, or an implied statement to customers which is specified at length in the complaint, to-wit, that the sign itself repre-

172

sents to customers that the Red Cross has an interest in the business, and so forth. Now, we have raised in our answer the objection that it is not within the jurisdiction of the Federal Trade Commission to pass on the proposition for this company under the express authority of Congress have used this symbol and name prior to 1905 and is specifically authorized to employ it in its business. The Federal Trade Commission is not empowered on the one hand to say that Congress has not given the right to do so, but we say we can do it because Congress tells us to do it, and you say that, of itself, does not connote the reason and that you say it is something that misleads.

173

I raise that general objection to the examination on this.

Trial Examiner Furnas: Go ahead.

Mr. Morgan: Does counsel make an objection to protest——

Mr. Sykes: I object to the testimony on the ground that the testimony is not within any issue which may be properly adjudicated by the Federal Trade Commission.

174

Mr. Morgan: If Your Honor please, that would appear to be a pleading to the jurisdiction of this Commission, and I submit, Your Honor, you can not properly entertain that kind of motion.

Trial Examiner Furnas: That is what I wanted to get at.

Are you putting that up to me to rule on?

Mr. Sykes: I am putting it up to you to rule on it.

Trial Examiner Furnas: Are you making that a motion?

Mr. Sykes: I am putting it to the Examiner, and a motion to strike, as not within any jurisdiction of this court.

175

Trial Examiner Furnas: The Examiner has no authority to rule on any motion to strike or to add to anything in the complaint. That is all done by the Commission, and it requires three of the Commissioners to be present to do that.

I understand what you are saying, but if you will make a motion or an objection, then the Examiner can rule.

Mr. Sykes: I object to the testimony as not being within the jurisdiction of this body to entertain.

Mr. Morgan: If Your Honor please, I move that the objection be overruled by the Examiner.

176

Trial Examiner Furnas: The objection is overruled and your exception is granted. Proceed.

Mr. Morgan: I might add just for the record, if Your Honor please, if Mr. Sykes on behalf of his client is to submit a motion like that, the Federal Trade Commission itself would be the proper forum before whom that motion could be filed.

Mr. Sykes: Of course, at the proper time I will submit a motion, but I am reserving my rights here. I do not want to raise the matters——

Trial Examiner Furnas: I understand. We will proceed.

177

The Witness: Should I rise when I answer these questions?

Mr. Morgan: No, sir; keep your seat.

Trial Examiner Furnas: You are all right. Read the question.

(The question referred to was read by the reporter as follows:

"Q. Are some of your products sold under what we might term the Red Cross mark or trade-mark?")

178 *Dwight G. W. Hollister—For the Commission—Direct*

The Witness: I would say that some of our products are sold under a Red Cross trade-mark owned by this company; owned by our company.

By Mr. Morgan:

Q. Which ones, please? A. Red Cross Household Towels. Red Cross Toilet Tissue. Red Cross Service Roll. Red Cross "Onliwon" Inter-Fold Toilet Tissue. Red Cross "Onliwon" Double Tissue.

Red Cross Individual Towels, Code 500. If you will put
179 that down for identification, that will do.

Now, may I say this: That in those names that I have given, when I say "Onliwon" Inter-Fold Toilet Tissue, there are one, two, or three different packings, depending upon the fold and the amount.

I can give more accurately a complete list.

Q. That is sufficient. A. That gives the general category of our products.

Trial Examiner Furnas: That is sufficient.

Mr. Sykes: Is it toilet tissue or toilet paper?

The Witness: Toilet tissue, it says. This is some of it.

180 *By Mr. Morgan:*

Q. This mark, Mr. Hollister, so I understand, was first used by your company as far back as 1897? A. May I ask a question of my counsel?

Trial Examiner Furnas: Yes.

The Witness: Now, so far as I know, it was, but the reason I am asking the question, sir, is that I am not particularly well informed in the techniques of trade-marks.

I mean, I can say the mark was used as far back as 1897. I understand that to be the case.

Trial Examiner Furnas: If the witness says approximately, I think that will answer counsel's questions.

The Witness: All right.

Mr. Morgan: I have the background that I will put in. I will ask the reporter to mark this as Commission's Exhibit No. 1 for identification. It will be so marked.

(The paper referred to was marked for identification as "Commission's Exhibit No. 1.")

182

By Mr. Morgan:

Q. I will ask you if you will be good enough to examine that and say if you can identify it and tell us what it is, please, sir. A. It appears to be a trade-mark registration, covering packages of toilet paper. It is a renewal of a mark.

Q. That is No. 82,193, registered June 13, 1911. Is that a renewal or the original? A. I am sorry.

Mr. Sykes: It does not help us to have a witness read what appears to be on the paper. He only knows what appears on the paper. I think the paper should be offered in evidence, and the paper will speak for itself.

183

Mr. Morgan: I am trying to get it in evidence.

The Witness: What I said is all right?

Mr. Morgan: Yes, sir.

I would like to have that admitted as Commission's Exhibit No. 1, if Your Honor please.

Trial Examiner Furnas: Is there objection?

Mr. Sykes: Subject to my same general objection of jurisdiction.

Trial Examiner Furnas: Miss Reporter, you will note that the trade-mark will be received as marked, as Commission's Exhibit No. 1.

184 *Dwight G. W. Hollister—For the Commission—Direct*

(The paper referred to, heretofore marked for identification "Commission's Exhibit No. 1," was received in evidence.)

By Mr. Morgan:

Q. Mr. Hollister, this Commission's Exhibit No. 1 in evidence, as I understand it—I don't know too much about trade-marks—this is the original trade-mark taken out by the A. P. W. Paper Company for the Red Cross mark; that is correct, isn't it? A. So far as I know it is, but I—it is before
185 my time.

Q. It says: "Application filed 1908. Registered June 13, 1911."

Miss Reporter, will you please mark this as Commission's Exhibit No. 2?

Trial Examiner Furnas: It will be so marked.

(The paper referred to was marked "Commission's Exhibit No. 2" for identification.)

By Mr. Morgan:

Q. Will you look at that?

186 Mr. Sykes: We can put these in. It is a formal matter. It may be put in subject to my general objection. It is a public document. Why ask questions about it?

Mr. Morgan: All right.

Trial Examiner Furnas: The document referred to by counsel for the Commission was not identified by the witness?

Mr. Morgan: No, Your Honor. It is trade-mark 311,124, registered March 13, 1934.

Trial Examiner Furnas: But counsel for the respondent is willing to have it admitted subject to his general objection.

It will be received and marked as Commission's Exhibit No. 2 by stipulation of counsel for the respondent.

(The paper referred to, heretofore marked for identification as Commission's Exhibit No. 2, was received in evidence.)

By Mr. Morgan:

Q. Commission's Exhibit No. 2, as I understand it, and correct me if I am wrong, sir, is a trade-mark to cover toilet tissue and paper towels? A. May I look at that? 188

Trial Examiner Furnas: Does not the document speak for itself?

Mr. Morgan: I am asking if I am correct.

Mr. Sykes: I object, Your Honor. It is modifying, if he answers, the terms of the document itself. The document is the best evidence.

The objection is to the witness stating what appears on the face of the paper.

Trial Examiner Furnas: It speaks for itself.

Mr. Morgan: Will the same procedure apply with respect to this one?

Mr. Sykes: The same thing, yes. 189

Mr. Morgan: Miss Reporter, may that please be marked Commission's Exhibit No. 3?

Trial Examiner Furnas: It will be so marked.

(The document referred to was marked as "Commission's Exhibit No. 3" for identification.)

Mr. Morgan: This is trade-mark 311,125, registered March 13, 1934.

Trial Examiner Furnas: By stipulation of counsel for the respondent and also for the Commission, Commission's Exhibit No. 3 will be received.

190 *Dwight G. W. Hollister—For the Commission—Direct*

(The paper referred to, heretofore marked for identification "Commission's Exhibit No. 3" was received in evidence.)

By Mr. Morgan:

Q. Mr. Hollister, your company advertise its products in various ways, I take it? A. As the term advertising is usually considered, yes.

Q. In its broad aspect? A. That is right.

Q. Do you advertise in what is known as nationally cir-
191 culated magazines? A. We have.

Q. And newspapers? A. Yes.

Q. These magazines I am referring as nationally known magazines are circulated all over the United States? A. We have carried copy in such national publications.

Q. And the newspapers in which you advertise, they also have interstate circulation, would you say? A. They have in some cases.

Q. They probably would have? A. I would not be able to answer that question definitely, but I am of the opinion that there are certain newspapers that have an interstate circulation, such as the New York papers, for example.

Q. In what papers, among others, did you advertise in, do
192 you recall? A. Most of our advertising has been done in local newspapers, in specific markets, such as Albany, Schenectady, Buffalo, or Boston.

Q. Do you employ in connection with your sales, salesmen who travel all over the country? A. We employ salesmen, but I would not say they travel all over the country. They travel within confined areas.

Q. Throughout the various States? A. That is right; yes, sir.

Q. Do they carry advertising material with them, the salesmen? A. I have an idea that they do.

Q. Do you use advertising cards or circulars that are distributed around the various States? A. In the past we have had some display cards and other promotional literature.

Mr. Morgan: Will you please mark that as two exhibits, Commission's Exhibits Nos. 4 and 5 for identification?

Trial Examiner Furnas: It will be so marked.

(The advertising material referred to was marked "Commission's Exhibits Nos. 4 and 5" for identification.) 194

By Mr. Morgan:

Q. Do you recognize these documents, Mr. Hollister, as being your advertisements? A. I would say those were.

Q. Take the first, the one at the left, Commission's Exhibit No. 4. A. Commission's Exhibit No. 4 appears to be a proof or tare sheet of an advertisement appearing in Good Housekeeping.

Q. And that was run by your company? A. That is right; it was run by A. P. W. Paper Company.

Q. And Good Housekeeping is a nationally known magazine? A. I only know that it is a magazine with national 195 circulation.

Q. That is what I want. It is the same thing? A. Yes, sir.

Q. Take the next one to the right, Commission's Exhibit No. 5. A. That is right; five.

Q. Will you identify that? A. That appears to be a proof or a tare sheet of an advertising which appeared in Ladies' Home Journal.

Mr. Sykes: What is the date?

The Witness: In the case of the first, Commission's Exhibit No. 4, February, 1940.

196 *Dwight G. W. Hollister—For the Commission—Direct*

In the case of Commission's Exhibit No. 5, March, 1940.

By Mr. Morgan:

Q. And the second is in which magazine? A. The Ladies' Home Journal.

Q. The Ladies' Home Journal, of course—— A. Is a magazine of national circulation, I would say.

Mr. Morgan: I offer those as Commission's Exhibits Nos. 4 and 5.

197

Trial Examiner Furnas: Any objection?

Mr. Sykes: No objection.

Trial Examiner Furnas: There being no objection, the advertising referred to by counsel for the Commission and identified by the witness will be received and marked as Commission's Exhibits Nos. 4 and 5.

(The papers referred to, heretofore marked for identification "Commission's Exhibits Nos. 4 and 5" were received in evidence.)

By Mr. Morgan:

198 Q. Mr. Hollister, in connection with your conduct of the business and sales work, does your company employ any invoices or letterheads using the words "Red Cross"? A. We use a letterhead on which the trade-mark appears, but it does not appear on our invoices.

Q. Have you got copies of them? A. In view of the letter from the Commission; I have.

Mr. Morgan: I asked Mr. Hollister to produce one of each because I do not have any.

The Witness: That is the letterhead, and that is the invoice.

Dwight G. W. Hollister—For the Commission—Direct 199

By Mr. Morgan:

Q. The invoice does not have the mark? A. No; it does not.

Mr. Morgan: I will ask that this letterhead, which is kindly furnished by the witness to the Commission, be marked as Commission's Exhibit No. 6 for identification.

Trial Examiner Furnas: It will be so marked.

(The paper referred to was marked "Commission's Exhibit No. 6" for identification.) 200

By Mr. Morgan:

Q. Will you please identify that? A. It is our letterhead.

Mr. Morgan: I offer that as Commission's Exhibit No. 6.

Trial Examiner Furnas: Any objection?

Mr. Sykes: No objection.

Trial Examiner Furnas: There being no objection, the letterhead identified by the witness will be received and marked as Commission's Exhibit No. 6.

(The paper referred to, heretofore marked for identification as "Commission's Exhibit No. 6" was received in evidence.) 201

By Mr. Morgan:

Q. Now, Mr. Hollister, I have here proposed exhibits. A. Yes, sir.

Mr. Morgan: Will the reporter please mark this as Commission's Exhibit No. 7 for identification?

Trial Examiner Furnas: It will be so marked.

(The roll of paper referred to was marked "Commission's Exhibit No. 7" for identification.)

By Mr. Morgan:

Q. Will you please look at Commission's Exhibit No. 7 and tell us what that is, please, sir? A. That is a roll of toilet tissue known as our service roll, Red Cross Service Roll, if you wish. It is on there.

Q. That is sold by you in various States? A. That is right. It is sold by the A. P. W. Paper Company in interstate commerce.

Mr. Morgan: I ask——

203 The Witness: Wait a minute. I may say this: It has been. It is not now. We are talking as of today, as I understand it.

Mr. Morgan: All right.

By Mr. Morgan:

Q. Over what period would you say that you sold it? A. I would say that we sold that from, let me see, I should say about five years. I think we discontinued it in 1940.

Just a moment. The latter part of 1940 or the beginning of 1941. That is an approximate opinion.

204 Trial Examiner Furnas: That is all right.

Mr. Morgan: The witness has identified it, and we move that Commission's Exhibit No. 7 be admitted.

Trial Examiner Furnas: Is there objection?

Mr. Sykes: It is objected to as irrelevant and immaterial. It is a matter which has been discontinued from use.

Trial Examiner Furnas: The objection is overruled and an exception granted.

The article identified by the witness will be received and marked as Commission's Exhibit No. 7.

(The paper referred to, heretofore marked for identification "Commission's Exhibit No. 7" was received in evidence.)

Mr. Morgan: Miss Reporter, will you please mark this as Commission's Exhibit No. 8 for identification?

Trial Examiner Furnas: It will be so marked.

(The article referred to was marked "Commission's Exhibit No. 8" for identification.)

By Mr. Morgan:

206

Q. I will get you to examine the exhibit, Commission's Exhibit No. 8 for identification, Mr. Hollister, and will you tell us what it is, please, sir, if you can? A. It is a roll of Red Cross toilet tissue.

Q. A product of the A. P. W. Paper Company? A. Yes.

Q. Red Cross brand. That has the checkerboard or what do you call it? What do you call that design? You have some name for that. A. No. I think it is a label, as far as I know. The label was patented or copyrighted, the label design and things.

Q. Do you still sell that one? A. Yes; we still sell that, though we have taken off within the last six months, approximately, the words "soft white."

207

Q. Over how long a period of time did your company sell that particular product? A. I should say this particular label since around 1935.

Trial Examiner Furnas: Approximately?

The Witness: Yes.

Trial Examiner Furnas: That is all right, sir.

Mr. Morgan: I offer Commission's Exhibit No. 8 for identification in evidence as Commission's Exhibit No. 8.

Trial Examiner Furnas: Any objection?

208 *Dwight G. W. Hollister—For the Commission—Direct*

Mr. Sykes: No objection.

Trial Examiner Furnas: There being no objection, the roll of toilet paper identified and described by the witness will be received and marked as Commission's Exhibit No. 8.

(The article referred to, heretofore marked "Commission's Exhibit No. 8" for identification, was received in evidence.)

Mr. Morgan: Miss Reporter, I will ask you to be
209 good enough to mark this exhibit as Commission's Exhibit No. 9 for identification.

Trial Examiner Furnas: It will be so marked.

(The article referred to was marked "Commission's Exhibit No. 9" for identification.)

By Mr. Morgan:

Q. Will you look at that exhibit please, Mr. Hollister, and then tell us what it is, if you can, sir? A. This is a package of Red Cross toilet tissue flat, a product of the A. P. W. Paper Company.

Q. That is sold by you in commerce? A. That is sold by
210 us in commerce.

Q. And how long—— A. I would say the same, approximately, the beginning of 1935. This particular package I am talking about now.

Trial Examiner Furnas: I understand.

Mr. Morgan: Thank you, sir.

If Your Honor please, I move that Commission's Exhibit No. 9 be received in evidence.

Trial Examiner Furnas: Any objection?

Mr. Sykes: I make no objection except the general objection I made at the beginning.

Trial Examiner Furnas: The package just identified and described by the witness will be received over objection of counsel for the respondent and marked Commission's Exhibit No. 9 in evidence.

(The article referred to, heretofore marked for identification "Commission's Exhibit No. 9" was received in evidence.)

Mr. Morgan: Miss Reporter, please mark this as Commission's Exhibit No. 10 for identification.

Trial Examiner Furnas: It will be so marked. 212

(The article referred to was marked "Commission's Exhibit No. 10" for identification.)

By Mr. Morgan:

Q. Mr. Hollister, I will ask you to examine Commission's Exhibit No. 10 for identification, and to tell us what it is, please, sir. A. This is a roll of Red Cross household towels, a product of the A. P. W. Paper Company.

Q. And that is currently sold in commerce by your company? A. It is.

Q. And has been so sold for how long, sir? A. I should say since the same period, around 1935. 213

Mr. Morgan: I offer that in evidence as Commission's Exhibit No. 10.

Trial Examiner Furnas: No objection?

Mr. Sykes: No, sir, except the general objection.

Trial Examiner Furnas: The roll of paper identified by the witness will be received and marked as Commission's Exhibit No. 10.

(The article referred to, heretofore marked for identification "Commission's Exhibit No. 10" was received in evidence.)

214 *Dwight G. W. Hollister—For the Commission—Direct*

Mr. Morgan: Miss Reporter, will you please mark this as Commission's Exhibit No. 11 for identification?

Trial Examiner Furnas: It will be so marked.

(The article referred to was marked "Commission's Exhibit No. 11" for identification.)

By Mr. Morgan:

Q. Mr. Hollister, I will ask you to examine Commission's Exhibit No. 11 for identification, and to tell us what that
215 one is, please, sir. A. This No. 11 is a package of Red Cross office towels made by the A. P. W. Paper Company.

Q. And that is curently sold by you in commerce? A. It was sold by us in commerce. We are not now selling the package as it appears before me.

Q. Do you sell that product under the Red Cross brand? A. We sell a similar product under the Red Cross brand.

Q. And how long have you been selling that? A. Well, now, do you mean the latter product?

Q. The substitute product. A. I should say approximately two years.

Mr. Sykes: This should not be discussed, how
216 things were formerly sold. The actual paper sold should be put in, because it is going to be a subject of dispute.

Trial Examiner Furnas: Let the witness testify to that.

Mr. Morgan: I will withdraw the question.

Trial Examiner Furnas: The question is withdrawn?

Mr. Morgan: That is correct, sir.

I move that Commission's Exhibit No. 11 for identification be received in evidence.

Trial Examiner Furnas: Objection?

Mr. Sykes: No, sir.

Trial Examiner Furnas: There being no objection, the paper identified by the witness and described by him will be received and marked as Commission's Exhibit No. 11.

(The article referred to, heretofore marked for identification "Commission's Exhibit No. 11," was received in evidence.)

By Mr. Morgan:

Q. I will repeat the question: This product, Mr. Hollister, is sold by you in commerce? A. I said was sold. 218

Q. Was sold? I am sorry. I believe you explained you have substituted the product, something like that? A. Yes.

Mr. Morgan: There is just one more exhibit.

Miss Reporter, will you mark this as Commission's Exhibit No. 12?

Trial Examiner Furnas: It will be so marked.

(The article referred to was marked "Commission's Exhibit No. 12" for identification.)

By Mr. Morgan:

Q. I will get you to look at that, please, Mr. Hollister. 219
A. Yes.

Would you like me to identify it?

Q. Yes, please. A. This is a package of Red Cross "Onliwon" Inter-Fold toilet tissue, a product of A. P. W. Paper Company, and it is now presently being sold in commerce.

Mr. Morgan: I would like to have that exhibit entered as Commission's Exhibit No. 12.

Trial Examiner Furnas: Is there objection?

Mr. Sykes: This is all taken subject to my general objection?

220 *Dwight G. W. Hollister—For the Commission—Direct*

Trial Examiner Furnas: Yes, your general objection.

Mr. Sykes: This is all within my objection that the Federal Trade Commission has no jurisdiction on this particular issue.

Trial Examiner Furnas: That is a matter that the Examiner has not ruled on.

It will be received and marked as Commission's Exhibit No. 12.

221 (The article referred to, heretofore marked for identification "Commission's Exhibit No. 12," was received in evidence.)

Mr. Sykes: Otherwise, I have no objection.

Trial Examiner Furnas: All right. Proceed.

By Mr. Morgan:

Q. Mr. Hollister, does your company make in connection with its business or use what might be called private brands for any customers? A. At the present time, the answer is no.

Q. Did you make those brands at any time?

222 Mr. Sykes: That is objected to as not within the issues of this proceeding, the charge of private brands.

Trial Examiner Furnas: Is there anything in the complaint?

Mr. Morgan: I am trying to develop how the mark has been used, Your Honor. I think it is entirely competent.

Trial Examiner Furnas: You may proceed, but will you connect this up later on?

Mr. Morgan: Yes.

Trial Examiner Furnas: You may proceed, the objection is overruled. If you fail to connect it up, the motion to strike will be granted.

The Witness: May I ask what the question was, please?

Trial Examiner Furnas: Read the question.

(The question referred to was read by the reporter.)

The Witness: We have made private brands.

By Mr. Morgan:

Q. And did these private brands use the Red Cross mark in any way? A. I did not think they did.

Q. They did not—— A. I mean, that is my best answer. 224
I don't think they did.

Q. And had the Red Cross mark owned by you under your trade-marks been licensed to anybody?

Mr. Sykes: I object to that as irrelevant and immaterial.

Trial Examiner Furnas: The objection is overruled. He may answer that if it is true.

An exception is granted.

By Mr. Morgan:

Q. We want the facts, that is all. A. I am to answer 225
that question?

Trial Examiner Furnas: Yes. Read the question so the witness will understand it.

(The question referred to was read by the reporter.)

The Witness: No, not specifically licensed to anybody, as I understand it. It has not been, as I understand the term "licensing" to connote.

We had one customer whose name appeared on a label on which the trade-mark or the indicia on it

indicated the name of the customer. In other words, we have never used the Red Cross trade-mark promiscuously on any private label.

There was one question, as I recall it, where the proper legal indicia appeared. Now, whether or not that was licensing by us to someone, I am not competent to tell.

By Mr. Morgan:

Q. Where was that customer located? A. Detroit.

227

Mr. Morgan: That is all.

Trial Examiner Furnas: Do you have any cross examination?

Mr. Sykes: May I have a recess for a few moments?

Trial Examiner Furnas: We will take a five-minute recess.

(A five-minute recess was taken.)

Trial Examiner Furnas: Miss Reporter, you will note that the recess has ended.

228 What is your further pleasure?

Mr. Sykes: I have one or two questions.

Cross Examination by Mr. Sykes:

Q. Has this trade-mark been used continuously by the company of which you are president since 1897? A. Yes.

Mr. Morgan: Which one are you referring to? Will you call it by the exhibit number?

The Witness: Wait a minute.

Mr. Sykes: The trade-mark, Commission's Exhibit No. 1 in evidence.

By Mr. Sykes:

Q. Has that been used continuously by your company since 1897? A. Yes.

Q. And this matter that you just testified to in reference to the Detroit dealer, how long ago did that occur? A. I think right after I became associated with the company.

Trial Examiner Furnas: When was that?

The Witness: It was in 1930.

Trial Examiner Furnas: 1930, approximately? 230

The Witness: Well——

Trial Examiner Furnas: You are sure of that?

The Witness: I am sure of my association date with the company, but I could not answer definitely the specific date of when the action was taken that I testified to.

By Mr. Sykes:

Q. Do you refer to the action taken to discontinue that, or how long ago did the Detroit dealer have this word "licensee" used on the paper? A. It was my recollection 231 that shortly after I came with the company.

Q. And when did that cease? A. I can't tell you. I don't——

Trial Examiner Furnas: The Examiner understands the witness came with the company in 1930?

The Witness: That is right.

Trial Examiner Furnas: All right; that identifies the time, then.

232 *Dwight G. H. Hollister—For the Commission—Cross*

By Mr. Sykes:

Q. Will you state whether or not that practice in reference to the Detroit manufacturer was discontinued at any time? A. Yes; may I ask a question off the record before I answer that?

Trial Examiner Furnas: We will be off the record.

(There was a short discussion off the record.)

233 Trial Examiner Furnas: On the record. State that for the record.

The Witness: The licensing indicia, we did not have any contract.

Trial Examiner Furnas: Whatever it was.

The Witness: It was discontinued shortly after I became associated with the company in 1930.

Trial Examiner Furnas: All right.

By Mr. Sykes:

Q. So far as you know, there was no arrangement made by which rights were transferred to the Detroit dealer? A. Oh, no; never to my knowledge.

234

Mr. Sykes: That is all.

Mr. Morgan: That is all.

Trial Examiner Furnas: You are excused. Thank you very much.

(Witness excused.)

Trial Examiner Furnas: What is your further pleasure, gentlemen?

Mr. Morgan: I move that we adjourn this hearing to 10 o'clock on Monday morning at Wilmington, Delaware.

235

Trial Examiner Furnas: Miss Reporter, you will note when this hearing is adjourned, it will adjourn to reconvene in Room 210, Post Office Building, Wilmington, Delaware, at 10 a. m. on June 15, 1942.

You will note that the hearing is now adjourned at 11:05.

(Whereupon, at 11:05 o'clock a. m., June 13, 1942, the hearing in the above-entitled matter was adjourned until Monday June 15, 1942, at 10:00 o'clock a. m., in Wilmington, Delaware.)

236

237

238 **Transcript of Hearing, Dated June 15th, 1942, Wilmington, Delaware**

BEFORE THE

FEDERAL TRADE COMMISSION

Docket No. 4747

In the Matter

of

239 A. P. W. PAPER COMPANY, INC., a corporation.

Room 213, Post Office Building,
Wilmington, Del.,
Monday, June 15, 1942.

Met, pursuant to adjournment, at 10 a. m.

Before:
MILES FURNAS, Trial Examiner.

Appearances:
MARSHALL MORGAN, Esq., appearing for the Federal Trade Commission.

240 EMERY H. SYKES, Esq., (Sullivan & Cromwell, 48 Wall Street, New York, N. Y.), appearing for the Respondent.

PROCEEDINGS

Trial Examiner Furnas: Mr. Reporter, you will note that this is a reconvening by agreement and notice of hearing in Docket No. 4747, at 10 a. m., in Room 213, Federal Building, Wilmington, Del. The last hearing was held at Albany, N. Y., on the 13th day of June, 1942.

You will note, Mr. Reporter, that counsel for the Commission and counsel for the Respondent are present.

The same decorum, gentlemen, will be exercised by those in attendance at this proceeding as is exercised in the United States District Courts. There will be no smoking or unnecessary talking in this room during the proceeding.

You are instructed, Mr. Reporter, by the Examiner that all matters transpiring at this proceeding will be on the record unless otherwise ordered by the Trial Examiner. Anyone desiring to make a statement off the record must request first permission of the Trial Examiner to do so.

242

We will now proceed with the hearing.

What is your further pleasure, gentlemen? Did you have a statement you wished to make?

Mr. Morgan: The Commission's first witness here will be Mrs. Hastings. She is here.

Trial Examiner Furnas: Mrs. Hastings, will you please come forward and be sworn?

MRS. GEORGE V. HASTINGS was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

243

Direct Examination by Mr. Morgan:

Q. Mrs. Hastings, you live here in Wilmington? A. Yes.

Q. You are a housewife, ma'am? A. Sir.

Trial Examiner Furnas: Just a minute. Has the Reporter the witness' name?

Mr. Morgan: I think he has, Your Honor.

Trial Examiner Furnas: All right.

244 *Mrs. George V. Hastings—For the Commission—Direct*

By Mr. Morgan:

Q. And your address here in Wilmington is—— A. 501 West Twenty-second.

Q. 501 West Twenty-second Street? A. West Twenty-second.

Q. Yes, ma'am.

Mrs. Hastings, I show you here Commission's Exhibit No. 7. I will get you to look at this carefully in your own time and in your own way. After you have looked at it tell us what that means to you and what significance that language has.

245

Mr. Sykes: I object to it as irrelevant and immaterial, what some writing which is here before us means to a person who is not called as an expert but is an ordinary housewife, as she says. It is wholly irrelevant and immaterial. It is incompetent.

Mr. Morgan: If Your Honor please, this witness is introduced here to develop by her—and others will follow—the meaning of this advertising to an ordinary lay person. That is the purpose of this hearing.

Trial Examiner Furnas: Objection overruled. Exception granted.

You may answer the question.

246

A. Well, what must I say, that I have used——

Trial Examiner Furnas: Let us have order, please, in the court.

A. —that I have used this product?

By Mr. Morgan:

Q. What I asked, I mean——

Trial Examiner Furnas: I don't believe counsel for the Commission has really made it very clear to the witness just what——

Mr. Morgan: I can probably make it a little plainer.

Trial Examiner Furnas: Lay a little foundation.

By Mr. Morgan:

Q. I want you to read the marking, the words, and anything else you find on this exhibit, and after you have examined it, why, tell us what it means, if anything.

Mr. Sykes: My objection is renewed, if the court please.

Trial Examiner Furnas: Same ruling. 248

A. Well, I don't know what to say, only that I have used this product. I saw this product in a magazine and then I went to my grocer and asked if he could order it that I could buy it. That is all I know about it.

By Mr. Morgan:

Q. Well, I will ask you some more questions, then.

State whether or not, in your opinion, after you have examined that exhibit, it would mean to you that there is some connection between that production and the Red Cross Company—Society? 249

Mr. Sykes: I object to it as irrelevant and immaterial, and the witness is incompetent to express an opinion.

Trial Examiner Furnas: I think the witness can tell what it means to her.

Objection overruled. Exception granted.

You may answer the question.

A. Well, I don't know what to say, only that I bought this product because I like to use the paper. I think it is good paper to use.

Trial Examiner Furnas: I didn't hear your answer.

The Witness: I like the product, and that is the reason I bought it. That is the only reason I can say.

By Mr. Morgan:

Q. I will ask you this, Mrs. Hastings: State whether or not, in your opinion, that marking, branding, on that product would indicate to you that it might be sponsored or approved by the Red Cross.

Mr. Sykes: Same objection as before.

251 Trial Examiner Furnas: Same ruling. Same exception.

Mr. Sykes: The question, you observe, is whether it might do something or other.

Trial Examiner Furnas: As I understand, the counsel for the Commission is trying to get the reaction of this witness' mind on this Exhibit No.—what is it?

Mr. Morgan: Seven.

Trial Examiner Furnas: —No. 7——

Mr. Morgan: That is right.

Trial Examiner Furnas: —and what he wants to know is what does the witness think it is? What

252 does it seem to be to the witness?

Is that correct?

Mr. Morgan: That is correct, yes.

Trial Examiner Furnas: All right. Proceed.

Mr. Morgan: Well, I don't think——

By Mr. Morgan:

Q. My last question was: After having noticed the marking and wording on that exhibit, whether or not that would mean to you that the product is approved or endorsed by the Red Cross.

Mr. Sykes: If the Court please, the question, even within your limitations, is whether it does mean, not whether it would or might.

Trial Examiner Furnas: Well, that is what the witness can answer, what it does mean to her, not what it meant to her a month ago. What does it mean to you now, if you want to put it that way.

Proceed. Objection overruled. Exception granted.

A. You mean what does it mean to me?

By Mr. Morgan: 254

Q. I asked you does—— A. Well, I don't understand
Q. I will try and make it a little clearer.

Trial Examiner Furnas: I don't think you have made it absolutely clear to the witness.

The Witness: I have never been in a courtroom before.

Mr. Morgan: Yes. That is all right.

Trial Examiner Furnas: That is all right.

Mr. Morgan: I will go a little further.

By Mr. Morgan: 255

Q. I wanted to ask you, Mrs. Hastings, after having examined the marking and the wording on that exhibit, whether or not that wording and marking means to you that product is approved or endorsed by the Red Cross?

Mr. Sykes: Objected to, and objected to as leading. Same objection.

Trial Examiner Furnas: Objection overruled. Exception granted. Proceed.

You may answer the question.

Mr. Morgan: The trouble is all these objections and talking here is confusing the witness.

Trial Examiner Furnas: That is all right. Counsel for the Respondent has the right to make the objections.

Mr. Morgan: It is entirely all right, sir.

Trial Examiner Furnas: Counsel for the Respondent is absolutely within his rights.

Mr. Morgan: I understand thoroughly.

Trial Examiner Furnas: Well, let us proceed.

Read the question to the witness, Mr. Reporter.

The Witness: I guess I am dumb.

Mr. Morgan: No. That is all right.

257 Trial Examiner Furnas: No. No.

Mr. Morgan: No, indeed.

Trial Examiner Furnas: Read the question to the witness.

(Question read by the Reporter.)

Mr. Sykes: By the Red Cross.

A. Well, I don't know. Is that what——

Mr. Sykes: You have answered.

By Mr. Morgan:

258 Q. You don't know. That is all.

I will ask you whether or not you think the wording and marking on that product would indicate or does indicate to you that the Red Cross may have something to do with it?

Mr. Sykes: Same objection.

A. I don't know.

Trial Examiner Furnas: Same ruling.

By Mr. Morgan:

Q. What? A. I don't know.

Q. You don't know.

I show you here, Mrs. Hastings, Commission's Exhibits C-4 and C-5.

Trial Examiner Furnas: Wait a minute. Wait a minute. We have no such exhibits.

Mr. Sykes: No "C."

Mr. Morgan: Commission's Exhibits 4 and 5.

Trial Examiner Furnas: Oh, we have 4 and 5, yes, but no "C."

Mr. Morgan: Commission's Exhibits 4 and 5.

By Mr. Morgan: 260

Q. I will get you to look at these. This is 4 here and this is 5 (indicating).

(Witness examines exhibits.)

Q. Now, I will ask you, ma'am, take the one on the left, first, Commission's Exhibit 4. Would any statement or marking on that advertisement—does it indicate to you that the Red Cross might have anything to do with that product—or does have anything to do with that product? A. I don't know.

Mr. Sykes: Just——

Trial Examiner Furnas: Do you want to strike 261 the answer?

Mr. Morgan: She says she didn't know.

The Witness: I don't know.

Trial Examiner Furnas: All right.

By Mr. Morgan:

Q. I will ask you if there is anything in either one of those advertisements which would lead you to believe or to think that those products are endorsed or approved by the Red Cross?

Mr. Sykes: Same objection.

A. I don't know.

Trial Examiner Furnas: Same ruling.

Mr. Morgan: That is all. That is all.

Trial Examiner Furnas: Take the witness. Cross examine.

The Witness: I don't know.

Mr. Sykes: No cross examination.

Trial Examiner Furnas: You are excused.

Mr. Morgan: Thank you, ma'am. Thank you so much.

263

(Witness excused.)

Trial Examiner Furnas: Call your next witness. We will take a five minutes' recess.

(There was a short recess taken.)

Trial Examiner Furnas: Gentlemen, are we ready to proceed?

Mr. Morgan: Yes, the next witness is——

Trial Examiner Furnas: Mr. Reporter, you will note that the recess is ended. We will now proceed with the witness.

264

Call your witness.

Mr. Morgan: I call Miss Catherine Horty, if your Honor please.

Trial Examiner Furnas: What is the name?

Mr. Morgan: Miss Catherine Horty.

Trial Examiner Furnas: Are you ready for your witness to be sworn?

Mr. Morgan: Yes, Your Honor.

MISS CATHERINE HORTY was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Miss Catherine Horty—For the Commission—Direct 265

Direct Examination:

Trial Examiner Furnas: Proceed.

By Mr. Morgan:

Q. You are Miss Catherine Horty? A. Yes.

Q. And you live here in Wilmington? A. Yes.

Q. And your address is what? A. 1100 Jackson Street.

Q. 1100 Jackson Street. Thank you, ma'am.

Miss Horty, I show you Commission's Exhibit here No. 7. I will get you to examine that carefully in your own time, the language on it, and any marking you may note. 266

(Witness examines exhibit.)

Q. Now, will you be good enough to tell His Honor there what, if any, meaning or significance that exhibit has to you?

Mr. Sykes: Objected to as——

Trial Examiner Furnas: Just a minute before you answer.

Mr. Sykes: —as irrelevant and immaterial, and incompetent for this witness to testify to that fact, the matter in the form of a red cross on the exhibit having been allowed the A. P. W. Paper Company for the purposes—— 267

Trial Examiner Furnas: I think that is an improper statement to make at this time before the witness.

Mr. Sykes: I am quoting from the law.

Trial Examiner Furnas: Well, that is all right. What is your objection? Just make your objection.

Mr. Sykes: My objection is by law that that is proper wording on there.

Trial Examiner Furnas: No. No. Now, make your objection but don't say what the law is or what the law isn't.

Mr. Sykes: All right. I will omit that statement, if the Court thinks that is improper. I always thought the law was——

Trial Examiner Furnas: The Examiner feels the other way.

Proceed.

Mr. Sykes: I object to the witness testifying as incompetent testimony.

Trial Examiner Furnas: Now, just let the Examiner say this: Now, the other witness you had on the stand—you had several objections. Can't you make one general objection to this line of testimony and let us have one ruling and let us not take up so much time?

Mr. Sykes: That is fine. I will be glad to do it.

Trial Examiner Furnas: All right.

Mr. Reporter, you will note that counsel for the Respondent objects to the line of testimony as asked the witness preceding this witness and all other witnesses that will be introduced by counsel for the Commission, as incompetent, irrelevant, and immaterial.

Mr. Sykes: Yes.

Trial Examiner Furnas: Have you any other further statement that you wish to add to that? To which the Examiner overrules the objection and grants an exception.

Proceed.

Mr. Morgan: I think we will have to read the question back to the witness.

Trial Examiner Furnas: Yes. Yes. Read the question back to the witness.

I want counsel for the Respondent to understand that the Examiner will entertain any other suggestion that he wants to make.

271

Mr. Sykes: Yes. There may be an objection as leading, and what not, but a general objection.

Trial Examiner Furnas: Yes.

(Question read by Reporter.)

Trial Examiner Furnas: Proceed.

A The only thing is the red cross on there led me to believe that it had an attachment with the American Red Cross when I bought it.

Mr. Sykes: Will you read the answer, please?

272

By Mr. Morgan:

Q. You have bought this product——

Trial Examiner Furnas: Just a minute. Read the answer.

(Answer read.)

A. That is right, and I think I purchased about two boxes of tissues in my life.

Trial Examiner Furnas: All right. Proceed.

Mr. Morgan: Take the witness.

Trial Examiner Furnas: Cross examine.

273

Cross Examination by Mr. Sykes:

Q. Miss Horty, are you a member of the American Red Cross? A. No, but I have always given to it annually.

Q. Yes. Did you see the red cross used on any other product than this? A. On rolls of towels. I have seen the red cross on that, but I have never bought it.

Q. Have you known the red cross name to be used—— A. No.

Q. With other products than this? A. No. They are the only two that I have ever noticed.

Q. Is there any Red Cross Pharmacy here in Wilmington? A. Not that I know of. I couldn't tell you where I bought the packages.

Q. It is purely by the association of the name—— A. Exactly.

Q. —that you got that idea? A. I only purchased two boxes of tissues in my life.

Q. Yes. Well, is the Wilmington Trust Company here in Wilmington? Isn't it? A. Yes.

Q. Do you associate that in some way with having some ownership or control of the City of Wilmington, that Trust 275 Company? A. No, I never gave that a thought.

Q. Never gave it a thought. The United States Steel Company, you are familiar with that name, aren't you? A. I have seen it.

Q. Yes. Do you associate that with some ownership or control by the United States of America? A. I really don't know. I never gave that a thought.

Mr. Morgan: May it please the Court——

Trial Examiner Furnas: Just a minute.

What is it?

Mr. Morgan: That line of cross examination is rather argumentative, I think.

276 Trial Examiner Furnas: Oh, it is, but I am going to let him go ahead a little further with it.

Mr. Morgan: All right.

Trial Examiner Furnas: Proceed.

By Mr. Sykes:

Q. Did you, when you examined this Exhibit 4, Exhibit——

Mr. Morgan: Exhibit 7, isn't it?

Trial Examiner Furnas: Seven, I believe.

Mr. Morgan: Seven.

277

Trial Examiner Furnas: Oh, no. It is four.

Mr. Morgan: Is it four? I am sorry.

Trial Examiner Furnas: Off the record just a minute.

(Discussion off the record.)

Trial Examiner Furnas: All right, gentlemen, let us proceed. On the record.

By Mr. Sykes:

Q. You believe that this is manufactured by mills which are operated by the Red Cross? A. Well, I never really thought of it. I just thought the red cross, that had some 278
connection with the American Red Cross.

Q. Some connection? A. That is what I thought, and I bought two boxes in my life of tissues.

Q. Did you observe the trademark "Red Cross, Registered United States Patent Office, by the A. P. W. Paper Company, Inc., Manufacturer"? A. No, never noticed that at all.

Q. Did you notice the sign "A. P. W. Trademark, Registered United States Patent Office, Albany, N. Y., U. S. A."? A. No.

Q. How much of this outside of Exhibit 7 did you examine? Anything more than the mark itself? A. That is all, just the Red Cross mark. 279

Q. Just saw the Red Cross? A. That is all.

Q. And you didn't examine any further? A. No.

Q. You didn't make any inquiry? A. No. I only bought two boxes of tissue in my life.

Q. Yes. How did you happen to come up here to this hearing? A. I got a notice to come up here.

Q. How did the person give you notice that you were to be a witness? A. A gentleman came to the door and asked me the question I am just telling you now.

Q. Is that the only question he asked you? A. That is the only thing, did I ever buy a box of this? I told him I

bought two boxes in my life, and he asked me did I think it had any connection with the Red Cross. I said, "Yes," when I saw that Red Cross mark on there I thought it had some connection with the American Red Cross.

Trial Examiner Furnas: Anything further?

The Witness: He asked me did I believe it had any connection with the American Red Cross and I told him "Yes."

Trial Examiner Furnas: Well, that has answered your question.

Mr. Sykes: Yes.

Trial Examiner Furnas: Anything further?

By Mr. Sykes:

Q. I want to know, is the operation of your mind that when you see any red cross you associate that with the American Red Cross Society? A. Yes.

Q. And if you saw that on a hospital wagon you would associate that with the American Red Cross? A. I sure would.

Q. If you saw it on a pharmacist's stand you would associate that with the American Red Cross? A. Yes.

Trial Examiner Furnas: Any——

Mr. Morgan: Yes. Just a minute.

Are you through?

Redirect Examination by Mr. Morgan.

Q. Miss Horty, this emblem here, the Red Cross—just forget this exhibit for the moment. A. Yes.

Q. What is the Red Cross that you have in mind that you speak of? What is it? What does it mean to you? A. The American Red Cross. We have a Red Cross station here that has an emblem, and it is similar to that.

283

Q. And this emblem made you think of that? A. Yes, and I thought that the two boxes of tissue I bought in my life had some connection with the American Red Cross.

Q. Now, distinguished counsel for the other side has asked you about somebody calling at your door and asking you a question. A. Yes.

Q. The gentleman, I understand, did ask you a question. A. Yes.

Q. You answered it? A. Yes.

Q. And you told him the truth as you saw it? A. Exactly as I told you here.

284

Q. And you stick by your answer? A. Exactly.

Q. Now, I want to ask you something else. You have been cross examined just now about some small writing on here. I want to get across the room here—I am probably 25 or 30 feet away from you; am I not? A. Yes.

Q. Can you read this "Red Cross" and the words on that paper?

Mr. Sykes: I object to that. The witness may cite——

Trial Examiner Furnas: Let us just see what he is leading up to. I don't, myself, know what he is driving at.

285

A. From here all I notice is the Red Cross and the two words written "Red Cross." That is the only thing I can read from here.

By Mr. Morgan:

Q. I am coming a little closer, see. How far am I? Twenty feet away? Can you read anything more there? A. No.

Q. Now, turning this around, using some language here that counsel has asked you about, can you read that from there? A. No.

286 *Miss Catherine Horty—For the Commission—Recross*

Q. How far am I now, probably 10 or 15 feet? A. Yes.
Q. Can't read it? A. No.
Q. Can you read it now? A. I can see "A. P. W."
Q. Can you read the language above it? A. No.
Q. I am probably five or six feet now, am I not?

Trial Examiner Furnas: Pretty nearly seven or eight, I think.

Mr. Morgan: Seven or eight.

By Mr. Morgan:

287 Q. Now, can you read it? A. Trademark Red Cross Regulations U. S. Patent Office, A. P. W. Company.
Q. I am also close enough—— A. I can read it plainly now.
Q. Yes.

Mr. Morgan: That is all.

Trial Examiner Furnas: Anything further?

Mr. Morgan: That is all.

Trial Examiner Furnas: You are excused.

Mr. Sykes: May I ask this witness another question——

Trial Examiner Furnas: Yes, yes.

Mr. Sykes: —before she goes?

288 Trial Examiner Furnas: Yes. You will please take the stand again.

Recross Examination by Mr. Sykes:

Q. Did you observe that this is marked "Not to be sold by retail stores"? A. No, I never noticed that on there until now you have called my attention to it.
Q. All the time you have been on the witness stand you did not notice that? A. No, not until you called my attention to it.
Q. Did you observe that it was marked "Made especially for use by hotels, hospitals, office buildings, industrial plants,

schools, theatres, and institutions? A. Not until you have just now called my attention to it.

Mr. Morgan: Your Honor please, in view of that, I want to ask one more question.

Trial Examiner Furnas: All right.

Redirect Examination by Mr. Morgan:

Q. Miss Horty, I will show you Commission's Exhibit No. 8 here. I will ask you to look this over and see if you see anything on there about not being sold.

290

Mr. Sykes: If the Court please, the paper itself shows what is on it.

Trial Examiner Furnas: I think so.

Mr. Morgan: Yes, I know, but——

Mr. Sykes: He is testing the witness—what examination she made.

Mr. Morgan: Yes, but the purpose of the question was—your idea was that she would not see that anyhow because it wasn't in the store. I want to ask her about that. Here is one that is in the store.

Trial Examiner Furnas: I will let her answer the question.

291

By Mr. Morgan:

Q. I want to ask you to look that over and see if you see any language on there that says it is not to be sold in retail stores?

Mr. Sykes: If Your Honor please, it appears that the witness has never seen this exhibit.

Mr. Morgan: I am showing it to her now in view of your question, and I wouldn't have done it otherwise.

Trial Examiner Furnas: Did you give the name of this exhibit?

292 *Miss Catherine Horty—For the Commission—Recross*

Mr. Morgan: No. 8.

A. No, it isn't on there.

By Mr. Morgan:

Q. It isn't on there, is it? A. No.

Mr. Morgan: That is all.

Trial Examiner Furnas: Anything further?

293 *Recross Examination by Mr. Sykes:*

Q. Madam, had you ever seen a roll like Exhibit 8? A. No.

Q. This is the first time you ever saw it? A. This is the first time I ever saw it.

Q. All you have testified to is that you have examined it and you don't find the words "not to be sold"? A. No.

Mr. Morgan: That is all.

Mr. Sykes: I move to strike it out as—what appears on the paper appears on the paper. What the witness says neither adds nor detracts from that.

Mr. Morgan: At the time he went at that himself —that question was prompted by his question.

294 Trial Examiner Furnas: Motion denied. Proceed. Exception granted.

Mr. Morgan: That is all.

Trial Examiner Furnas: Call your next witness. You are excused. Thank you very much for coming in.

(Witness excused.)

Mr. Morgan: Is Miss Cecelia Donahoe here? You are Miss Donahoe?

Trial Examiner Furnas: You are ready for the witness to be sworn, are you?

Mr. Morgan: Yes, Your Honor.

Cecelia J. Donahoe—For the Commission—Direct 295

CECELIA J. DONAHOE was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Trial Examiner Furnas: Proceed.

Direct Examination by Mr. Morgan:

Q. Miss Donahoe, you live—

Trial Examiner Furnas: Did you get the name?

Mr. Morgan: Yes, Mrs. Cecelia Donahoe. 296

By Mr. Morgan:

Q. You live here in Wilmington? A. Yes.

Q. Your address here, ma'am? A. 1016 Jackson.

Q. Jackson Street? A. Jackson Street; yes, sir.

Q. Miss Donahoe, I will show you here Commission's Exhibit No. 8 and get you to look that over carefully in your own time. Notice the wording on it, any marks you may find on it. A. No, I don't see anything.

Q. I mean you see wording on it, language, wording, and printing? A. Oh, yes, I do. No, I don't see it.

Q. After you have looked that over, I will ask you to 297
tell us whether or not—what it means to you, what it represents to you.

Mr. Sykes: Same objection.

Trial Examiner Furnas: Same ruling with an exception.

Always, Mr. Reporter, note an exception.

A. Well, I always thought that Red Cross was associated with the Red Cross of Delaware, but I had never bought this product, and I don't know why I am here.

298 *Cecelia J. Donahoe—For the Commission—Cross*

By Mr. Morgan:

Q. Well, you have been summoned here to give very brief testimony in a Federal Trade Commission case involving the Red Cross mark, and we won't keep you very long, ma'am. A. A gentleman came and asked me if I saw that would I associate that with the Red Cross, and I said I did the same as I did with Johnson's products.

Q. I didn't get that. A. I associated the Red Cross with Johnson's products, and he asked me if I saw that would I think the Red Cross made it, and I said, "Yes, but
299 I have never bought any."

Q. You said "Yes", but you had never bought any? A. What?

Q. You said "yes", but you had never bought any? A. I haven't bought any.

Q. Yes. A. But I would if I saw that—would think that the Red Cross had it the same as when I see Johnson's product.

Q. Please, ma'am, state whether or not, following that up, the marking you find on that package would indicate that the product was approved or sponsored by the Red Cross? A. Well, I can't see what is on here without glasses. I can't see what is on here.

300 Q. Maybe you didn't understand me. I say, Does the labeling, the marking, on that package—does it indicate to you—does it or does it not that the product is approved by the Red Cross? A. Yes, it does.

Q. It does? A. Yes, it does.

Mr. Morgan: That is all.

Trial Examiner Furnas: Cross examine.

Cross Examination by Mr. Sykes:

Q. How many times before you appeared in court today did you see this particular exhibit? A. This is the first time I have ever seen it.

Q. Yes. What was shown you which you stated you associated with the Red Cross? A. You mean the man that came to me?

Q. Yes. A. Well, he had something with him, and all I would see—all I would notice would be the Red Cross. Whatever he showed me had the Red Cross on it, and he asked me if I saw that in a store would I think that was made by the Red Cross, and I said "yes".

Q. You don't remember what he showed you? A. It was some product with a red cross on it. I don't know. It was some product with a red cross, but I have never used it; I have never bought it. 302

Mr. Sykes: Well, I move, in view of that testimony, to strike this out as irrelevant and immaterial.

Trial Examiner Furnas: Motion denied. Exception granted.

By Mr. Sykes:

Q. Now, Madam, what marking——

Trial Examiner Furnas: Wait just a minute. Maybe the Examiner is wrong.

Did you mean to strike out the part of the testimony that said she had never bought any? 303

Mr. Sykes: No.

Trial Examiner Furnas: Oh, well, the ruling stands as it is then.

Mr. Morgan: Is your motion—do you want to strike the witness' testimony?

Mr. Sykes: Completely, yes.

Trial Examiner Furnas: The ruling on the motion stands.

Mr. Morgan: You would like to go home, would you not?

304 *Cecelia J. Donahoe—For the Commission—Cross*

Trial Examiner Furnas: Is there anything further?

Mr. Sykes: Yes, I have a few questions to ask.

(Record read by Reporter.)

By Mr. Sykes:

Q. What he showed you did you read? A. No, I didn't.

Q. All he showed you was something with a red cross? A. That is all.

Q. And he asked you if the red cross on that you would
305 associate with the Red Cross Society? A. Yes.

Q. Now, what is the thing that indicates to you on this Exhibit 8 that it has been approved by the Red Cross Society? A. I don't know.

Q. You have just testified, as I recall it, that these markings indicate that this has been approved by the Red Cross? A. This cross is what I mean.

Q. You mean the mere sign of the cross—— A. Yes.

Q. —is sufficient to indicate that the Red Cross Society has approved that? A. I didn't think anyone else used the Red Cross.

Q. Why did you think——

306 Trial Examiner Furnas: Just a minute. I didn't get the answer.

Mr. Sykes: "I did not think anybody else would use the Red Cross."

Trial Examiner Furnas: Oh, I see. Yes.

Mr. Morgan: A very good answer.

By Mr. Sykes:

Q. Did you know that other people were, as a matter of law, authorized to use the Red Cross? A. No.

Q. Did you ever see Johnson & Johnson's products? A. Yes, I was going to say I did that.

Q. Now, did you think they had been approved by the Red Cross? A. I thought so.

Q. And authorized by the Red Cross? A. I thought so, or I didn't think they would use it if they hadn't been.

Q. The operation of your mind is that anybody using the Red Cross must get the authorization of the Red Cross Society? A. Yes.

Q. You have a general idea that the use of the Red Cross, broadly speaking, is forbidden; don't you? A. No, I don't.

Q. Well, if you should read this exhibit you would find reference to the place of manufacture; wouldn't you? A. Yes. 308

Q. But if you should read the exhibit and see that it was a trademarked thing and it was registered by the United States Patent Office, would you still think it was a Red Cross? A. I don't know whether I would or not.

Q. If it says, "A. P. W. Paper Company, Manufacturer," would you still think it was a Red Cross product? A. Well, I tell you I never gave that much thought. I saw the Red Cross and I thought it was all one concern.

Q. As I understand it, a man came to see you one day and showed you something with a red cross on it? A. Yes.

Q. And you didn't read the thing? A. No. 309

Q. And he asked you if you would associate that with the Red Cross? A. Yes.

Q. And you said you would? A. Yes.

Q. That is all you have testified here today? A. That is every word of it.

Q. And did your thought go so far as to say that the Red Cross got a royalty or a percentage on it? Did your thought carry you that far? A. I never thought of that.

Q. That this was used by the Red Cross Company—Society? Was that the impression it made on you? A. Yes, I thought the Red Cross made that, and that was all I thought.

Q. The Red Cross manufactured this? A. Yes, I thought that the whole thing was the Red Cross, and I have never used it and he came and asked me, and I said I thought so.

Q. The way your mind operates was that in all things that had the red cross mark on them the Red Cross Society manufactures them? A. Yes, I thought so.

Q. And do you carry that same thought, Madam, on into the use of other proper names like the word "United States"? If you saw that associated with some product would you think it belonged to the United States? A. If
311 I saw the "United States"?

Q. If you saw "United States Steel Company" would you think that belonged to the United States of America? A. Yes. Yes.

Q. And the Wilmington Trust Company down here belongs to the City of Wilmington? A. Yes.

Mr. Sykes: All right.

Mr. Morgan: Just one question.

Redirect Examination by Mr. Morgan:

Q. The Red Cross mark—Miss Donahoe, you don't know
312 but just one Red Cross; do you? A. No.

Q. That is the American Red Cross? A. Yes, that is all I know. That is all I know.

Mr. Morgan: That is all.

(Witness excused.)

Trial Examiner Furnas: Mr. Reporter, note a five minutes' recess.

(There was a short recess taken.)

Trial Examiner Furnas: Mr. Reporter, you will note that the recess is now ended.

Mr. Attorney, call your next witness.

Mr. Morgan: If Your Honor please, the next witness does not appear to be here, but I will try the next one after that one.

Mr. Sykes: Before he calls his next witness, may I make a motion with reference to the testimony of this witness?

Trial Examiner Furnas: Yes.

Mr. Sykes: This witness' testimony.

Trial Examiner Furnas: The one that just left the stand? 314

Mr. Sykes: Yes, Mrs. Donahoe.

—appears not to be within the pleadings. It appears that she was not one to whom anything was represented nor from which anything could be implied. She doesn't appear to have ever seen the document until it was called to her attention by the representative of the Federal Trade Commission and merely expresses an opinion based on what would have happened if it had been shown to her.

Mr. Morgan: If Your Honor please, why, the witness was shown the product itself, which is an exhibit in the case, and was asked to note the markings 315 and language, and so forth, on the exhibit, and then to state her idea or her impression of it. That is exactly what the witness did.

Trial Examiner Furnas: Yes. Well, motion denied and exception granted.

Call your next witness.

Mr. Morgan: Mrs. Clark Colgain.

Trial Examiner Furnas: Are you ready for the witness to be sworn?

Mr. Morgan: Yes, sir.

316 *Mrs. Clark Colgain—For the Commission—Direct*

MRS. CLARK COLGAIN was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Trial Examiner Furnas: Proceed. On the record.

Direct Examination by Mr. Morgan:

Q. Mrs. Colgain, do you live here in Wilmington? A. Yes, I do.

Q. Are you a housewife? A. Yes.

Q. What is your address here, please, ma'am? A. 2402
317 Van Buren.

Q. 2402? A. Van Buren.

Q. Van Buren Street? A. Yes.

Q. Wilmington.

Miss Colgain, I will show you this package here which is Commission's Exhibit No. 8. I will get you to look at that just in your own time, read what you find on it, and note any markings you find on it.

(The witness examines the exhibit.)

Q. Now, after having examined that exhibit, will you tell His Honor there what it means, what it means or indicates to you?

318

Mr. Sykes: I would like to have the witness interrogated, first, as to whether she has ever seen this or whether she is called fresh and asked her opinion.

Trial Examiner Furnas: Well, you can do that—you can bring that out on cross.

Mr. Sykes: I have the same general objection.

Trial Examiner Furnas: Same ruling. Exception.

A. You mean this paper——

Trial Examiner Furnas: Just read the question to the witness, please.

(Question read.)

A. Well, I have never used that.

Trial Examiner Furnas: You speak of this exhibit now which is before you?

The Witness: Yes.

By Mr. Morgan:

Q. My question was not whether you used it or not. I am just asking you what it indicates to you, what it appears to be to you.

Mr. Sykes: Then I want to renew my objec- 320
tion,——

Trial Examiner Furnas: Same ruling.

Mr. Sykes: —this witness never having examined this particular exhibit. She is called to testify as to opinion. She is thoroughly incompetent.

Trial Examiner Furnas: Same ruling.

Proceed.

A. Well, I don't know what to say.

By Mr. Morgan:

Q. Well, I will ask you some questions, then. 321

After having looked at that exhibit, Mrs. Colgain——

Trial Examiner Furnas: Please give the number of the exhibit.

Mr. Morgan: No. 8.

By Mr. Morgan:

Q. —and having noted the marking on it and the language on it, I will ask you whether or not that indicates to you that it may be approved or sponsored by the Red Cross?

322 *Mrs. Clark Colgain—For the Commission—Direct*

Mr. Sykes: Further objection as leading.

Trial Examiner Furnas: Yes, but I am going to permit it. Objection overruled.

A. Well, I don't know whether any other product uses that trademark, the Red Cross. I thought Johnson & Johnson was the ony one that used it.

By Mr. Morgan:

Q. Does that Exhibit No. 8 indicate to you that the Red
323 Cross may be interested in this product—have something to do with it in some way?

Mr. Sykes: Same objection as leading.

Trial Examiner Furnas: The witness doesn't seem to understand exactly. She stated she didn't know what the attorney was driving at, but I am going to permit him to lead just a little bit in order to get it before the witness, and objection overruled and exception granted.

You proceed.

A. Well, there is only one company could use that trade-
324 mark, wouldn't that be? That would be Johnson & Johnson. That would be my idea. I don't see how this company could use that.

By Mr. Morgan:

Q. State whether or not the marking and language on Exhibit 8 might—does indicate to you—does not indicate to you that the Red Cross uses that product? A. Well, the only——

Mr. Sykes: Same——

A. I am sorry——

Mr. Sykes: I want to renew my objection——.

Trial Examiner Furnas: Same ruling.

Mr. Sykes: —as leading. The witness has already testified as to what is in her mind.

Trial Examiner Furnas: Same ruling and exception.

Proceed.

A. Well, the only thing would draw your attention would be the—just the Red Cross. That would be all. I still couldn't see where they would have the privilege to use that trademark. 326

Trial Examiner Furnas: Now, when you say "they" whom do you mean by that?

The Witness: Johnson & Johnson.

By Mr. Morgan:

Q. Well, how about this exhibit? You say Johnson & Johnson would not have the right, and you wouldn't think so. Would that same answer be true, in your view, as to the manufacture of this product? A. I wouldn't think so.

Q. What? A. I wouldn't think so. I wouldn't think they would have the right to use it. 327

Mr. Sykes: I move to strike out the witness' testimony as to what people have a right to do. That is a matter of law.

Trial Examiner Furnas: Yes.

Mr. Sykes: This witness' idea as to what the law is, her thought that Johnson & Johnson is illegally using the Red Cross mark, which they have used for 50 years, is certainly not helpful to any Commission.

Trial Examiner Furnas: Are you making a motion to——

328 *Mrs. Clark Colgain—For the Commission—Direct*

Mr. Sykes: Yes, I move to strike.

Trial Examiner Furnas: Motion denied. Exception granted. I am going to let it stay in for what it is worth.

By Mr. Morgan:

Q. Miss Colgain, you just forget this for the moment. You know of the Red Cross; do you? A. I do.

Q. What does the Red Cross mean to you? A. I always feel that the Red Cross means helping others.

Q. Helping others? A. Yes.

329 Q. That Red Cross you refer to as something which helps others—

Mr. Sykes: I object to this line of testimony.

Trial Examiner Furnas: Your objection is overruled. Proceed.

Q. You haven't——

Trial Examiner Furnas: Furthermore, don't make any objections any more until the other side has completed his question. This goes to both sides.

Mr. Sykes: I am sorry. Did I interrupt?

330 Trial Examiner Furnas: I don't think so intentionally, but I want to caution both of you.

Mr. Sykes: I am going to read the record on you when we get through.

Trial Examiner Furnas: Well, the Examiner may be wrong.

Mr. Sykes: I am wrong occasionally.

By Mr. Morgan:

Q. Your Red Cross that you mentioned that helps others, they have a sign or an emblem. What is that? A. The Red Cross.

Q. I will ask you is that the sign or emblem to you? A. That looks like the Red Cross.

Q. To you that is the Red Cross sign or emblem? A. That is what it looks like to me.

Q. That Red Cross that you say helps people? A. Yes.

Mr. Morgan: That is all.

Trial Examiner Furnas: Cross examine.

Cross Examination by Mr. Sykes:

Q. Are you a member of the Red Cross Society, ma'am? 332
A. I beg your pardon?

Q. Are you a member of the Red Cross Society? A. Yes, I help once in a while when my name is on it. I contribute.

Q. Do you think that Johnson & Johnson is associated with the American Red Cross? A. Well, I can't answer that. All I know, I use their products and they have that on their——

Q. Have that sign? A. Yes, they do.

Q. You have used them a good many years? A. Yes.

Q. Probably since your childhood you have used those products, haven't you? A. Yes.

Q. And that sign has been on there all the time that you have used it? A. As far as I know. 333

Q. As far as you recall? A. Yes.

Q. Even before you had heard of the American Red Cross you had seen Johnson & Johnson products?

Trial Examiner Furnas: I didn't get your question.

By Mr. Sykes:

Q. I said, even before you had heard of the American Red Cross you had seen the Johnson & Johnson product; is that right? A. That trade name——

334 *Mrs. Clark Colgain—For the Commission—Redirect*

Q. That trademark; yes. A. The Red Cross, yes.

Q. And you have not used the products of the A. P. W. Paper Company? A. No.

Mr. Sykes: That is all.

Mr. Morgan: Just one question.

Trial Examiner Furnas: All right.

Redirect Examination by Mr. Morgan:

Q. So far as you know, Miss Colgain were the products of Johnson & Johnson approved by the Red Cross? Are
335 they?

Mr. Sykes: I object to that, Mr. Examiner.

Trial Examiner Furnas: Well, I will sustain the objection because Johnson & Johnson are not on trial.

Mr. Sykes: They are not in this case at all.

Mr. Morgan: Exactly.

Trial Examiner Furnas: I think both of you——

Mr. Morgan: I will withdraw the question.

Trial Examiner Furnas: All right. Question withdrawn.

Mr. Morgan: I merely asked it for——

Trial Examiner Furnas: Anything further? If
336 not, you are excused.

Have you any further question?

Mr. Sykes: No, I have no further question.

The Witness: May I ask you a question?

Trial Examiner Furnas: Yes. Off the record.

(Discussion off the record.)

(Witness excused.)

Trial Examiner Furnas: Five minutes' recess.

(There was a short recess taken.)

Trial Examiner Furnas: Mr. Reporter, you will note that the recess taken on account of absence of a

witness will now be ended as the witness has appeared.

Gentlemen, proceed with the hearing. Are you ready for your witness to be sworn?

Mr. Morgan: Yes, Your Honor.

MRS. PERCY L. HENDERER was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Morgan: 338

Q. Give your name to the Reporter. Mrs. Percy L. Henderer; isn't that it? A. That is right.

Q. Mrs. Henderer, do you live here in Wilmington? A. Yes.

Trial Examiner: No. No. Did you say Bloomington or Wilmington?

The Witness: Wilmington. Wilmington.

Mr. Morgan: Wilmington.

Trial Examiner Furnas: I thought you said Bloomington.

Mr. Morgan: No.

Trial Examiner Furnas: All right. Proceed. 339

By Mr. Morgan:

Q. Are you a housewife? A. Yes.

Q. What is your street address here, please, ma'am? A. Street address?

Q. Yes, ma'am. A. 517 West Twenty-fifth Street?

Q. West Twenty-fifth Street? A. Yes.

Q. Mrs. Henderer, I am going to show you Commission's Exhibit No. 8 in this matter. I will get you to look this over, noting the language or printing on it, any marks you find on it. After you have looked at it, why, just in your

340 *Mrs. Percy L. Henderer—For the Commission—Direct*

own way tell us what it means or indicates to you. A. Well, now, this is coming back to me. How long has it been——

Mr. Sykes: This is all subject to the same objection as to each witness.

Trial Examiner Furnas: Yes., Certainly.

The Witness: Is that all right, what I am going to say?

Trial Examiner Furnas: Proceed. Yes.

By Mr. Morgan:

341 Q. Answer in your own way, ma'am. A. All right. I have been studying and wondering just what—when that man came and this Red Cross came to my mind, and I remember the gentleman saying that it had nothing to do with Red Cross; it was just simply an advertisement, this Red Cross.

Q. What gentleman said that? A. But I don't know his name. But I did not have my—but I don't know how the got my name down here. That is what I would like to know.

Q. Well, you have never seen me before, never talked to me before; have you? A. I was just wondering when I come in here, because it has been—I thought it was over two years
342 ago, but maybe that is too far back, but I have been trying to think and think and think.

Q. Well, irrespective of some other gentleman, just look at that, please, ma'am, as I say, and look at the wording on it and the marks on it, and tell His Honor there what it means to you, if anything, what the product is. A. Well, I don't know what to say here.

Q. I will ask you this, then: After looking that over and noting the marking and the language on it, state whether or not that product indicates to you that it may be sponsored or approved by the Red Cross.

Mr. Sykes: Leading. Objected to.

Trial Examiner Furnas: What?

Mr. Sykes: As leading.

Trial Examiner Furnas: Well, I think so, too, but the witness stated that she didn't understand just what it is, and I think personally it is permissible.

Mr. Morgan: Now, if Your Honor please, just on the question of leading, in the complaint here there are seven allegations here set forth in the complaint stating what the advertising of this product means to the public.

Trial Examiner Furnas: Well, now, just a minute, 344
please.

Mr. Morgan: Well, let me finish, just a second. Now, those seven statements there are categorically denied also by the Respondent, and we have a direct sharp issue on those seven points.

Trial Examiner Furnas: I understand.

The objection is overruled and exception granted. Read the question to the witness.

Mr. Sykes: If the Court please, I want to make a suggestion: That any statements as to what it means to the public are immaterial. The issue is as to what it represented to customers and prospective customers.

345

Trial Examiner Furnas: Yes. That speaks for itself. Proceed.

The Witness: Now, am I to talk?

Trial Examiner Furnas: Just read the question. Or ask the question again of the witness.

Mr. Morgan: I will ask another question before that one.

By Mr. Morgan:

Q. Have you ever used any Red Cross towels or anything like that? A. Nothing at all.

346 *Mrs. Percy L. Henderer—For the Commission—Direct*

Q. No Red Cross products? A. No, none at all.

Q. Now, my other question was, Mrs. Henderer, after having noted the wording and marking on that exhibit, tell His Honor whether or not that wording and marking would indicate to you that that product is approved by the Red Cross.

Mr. Sykes: I want to add——

Trial Examiner Furnas: Same ruling.

Mr. Sykes: Yes; same objection.

Trial Examiner Furnas: Same objection; same
347 ruling.

Mr. Sykes: I want to add this additional objection: It is not within the pleadings.

Trial Examiner Furnas: Yes. Proceed.

A. Now, when the gentleman was at the house he stated that this had nothing to do with Red Cross at all; it was just simply a——

By Mr. Morgan:

Q. I am asking you what you think.

Trial Examiner Furnas: Yes.

348 A. What I——

Q. Yes, what you think about it. A. Well, when I was talking to you it didn't appeal to me that it had anything to do with the Red Cross.

Q. Did not have anything to do with it? A. Anything to do with it. It was just simply an advertisement.

Mr. Morgan: I may say, Your Honor, that I was never in Wilmington before in my life.

Trial Examiner Furnas: That is all right.

Anything further?

Mr. Morgan: Just a minute. Just a minute.

349

By Mr. Morgan:

Q. Look at that exhibit further and say whether or not, in your view, or you think that labeling, marking, would mean that that product is used by the Red Cross?

Mr. Sykes: We already have an answer to that, haven't we, if the Court please?

Trial Examiner Furnas: I don't recall.

Mr. Morgan: I don't think so.

Trial Examiner Furnas: Go ahead. Let her answer it again anyhow. It won't hurt.

350

A. Now, what was it said? You thought—did it—or do I think it has been used by the Red Cross?

By Mr. Morgan:

Q. No; is used by the Red Cross? A. Is used by the Red Cross?

Q. Yes, ma'am.

Mr. Sykes: It is not within the pleadings, either.

A. Well, I don't know about that.

Mr. Morgan: That is all of this witness.

Trial Examiner Furnas: Cross examine.

Mr. Sykes: No cross examination. 351

Trial Examiner Furnas: You are excused.

(Witness excused.)

Trial Examiner Furnas: Call your next witness.

Mr. Morgan: Call Mrs. Young who is here.

Trial Examiner Furnas: Thank you very much for coming in.

Mrs. Henderer: You are quite welcome.

Trial Examiner Furnas: Let us proceed. Call your next witness.

Mr. Morgan: Mrs. Young.

352 *Mrs. R. C. Young—For the Commission—Direct.*

Trial Examiner Furnas: Do you gentlemen have the name?

Mr. Sykes: Yes, I have the name but not the address.

Trial Examiner Furnas: Well, that will come later.

Mr. Morgan: Mrs. R. C. Young.

Trial Examiner Furnas: Are you ready for the witness to be sworn?

Mr. Morgan: Yes, if Your Honor, please.

353

MRS. R. C. YOUNG was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Trial Examiner Furnas: Go ahead.

Direct Examination by Mr. Morgan:

Q. Mrs. Young, do you live here in Wilmington? A. North Hills.

Q. Ma'am. A. North Hills, a suburb of Wilmington.

Q. And you are a housewife? You keep house? A. Yes.

354 Q. What is your street address here in Wilmington? A. 605 Northside Drive. 605 Northside Drive.

Q. I think the subpoena read 601. A. That is right.

Mr. Morgan: It is wrong.

Trial Examiner Furnas: Well, that is immaterial.

By Mr. Morgan:

Q. Mrs. Young, I will get you to look at this exhibit, Commission's Exhibit No. 8—— A. Well, I happen to know all about it, and I can tell you that I have used Red Cross towels for quite some time?

Q. You have used Red Cross products? A. Yes, and I found out before I came in here what this was all about, or my husband did for me, and I recall when he told me what it was about a year ago. I was on the front lawn and this man came around and asked me some questions about using Red Cross towels. I don't know how he got my name, but apparently from the store where I deal, where they sell these Red Cross products. He asked me if I bought them because I thought they were endorsed by the American Red Cross, and I told him no, I didn't, because if they had a sale on Red Cross I bought those; if they had a sale on Scott's I bought those, whatever they had a sale on, but I had never 356
been under the impression that it had anything to do with the Red Cross. Well, as a matter of fact, I lived in Washington most of my life, and I had some connection with the American Red Cross, and I am under the impression that they don't endorse or sponsor it.

Q. Would you say that, in your view, as that product is labeled and marked, would indicate it is approved by the Red Cross? A. No, there is nothing there that indicates it is approved by the Red Cross.

Q. Just forget that exhibit for the moment. You say you do know the Red Cross. Do you know of its work? A. I haven't been in contact with them for some years. 357

Q. I know, but in a general way you know what the Red Cross is? A. Yes.

Q. And what it means? A. Yes.

Q. Its work? A. Yes, I do.

Q. What is the emblem of the Red Cross? A. The emblem is like that (indicating).

Trial Examiner Furnas: You say "that". You mean the Commission's Exhibit No. 8 before you there?

The Witness: Yes.

Mr. Sykes: There is no issue as to that.

358 *Mrs. R. C. Young—For the Commission—Direct*

Mr. Morgan: Wait a minute. Wait a minute. I am developing something. Just a minute.

By Mr. Morgan:

Q. Now, as I understand you, the emblem of this Red Cross, you know, is the Red Cross? A. It is a Red Cross.

Q. I will get you to look at that exhibit and say if that is the same emblem you had in mind when you refer to the Red Cross? A. Well, of course, I haven't compared——

Q. So far as you know, is it the same emblem? A. Of
359 course, I can't tell offhand. It is. Of course, I never had the occasion to compare the original Red Cross emblem.

Q. If you went into a store and saw that package on a counter, saw that Red Cross on that package, what would you think?

Mr. Sykes: What would you think about what?

A. I don't know whether I would think at all.

Trial Examiner Furnas: The witness answered.

Mr. Morgan: That is all.

Trial Examiner Furnas: Cross examine.

Mr. Sykes: I have no cross examination, may it
360 please the examiner.

Trial Examiner Furnas: You are excused.

Mr. Morgan: That is all.

Trial Examiner Furnas: Anything more before lunch hour?

Mr. Morgan: I have a witness summoned for 12.

Trial Examiner Furnas: All right.

Mr. Morgan: It will be 10 minutes.

Trial Examiner Furnas: All right.

Mr. Morgan: If Your Honor please, I would like to make one statement for the record there.

Trial Examiner Furnas: All right.

Mr. Morgan: And it is in response to Mr. Sykes' objection or observation a little while ago regarding the matter of customers and prospective customers. I just want to say that in our proceeding here, and in the view of the Commission's attorney, anyone who might buy a product is a prospective customer and is, therefore, entitled to be examined by me.

I just want the record to state that.

Trial Examiner Furnas: Well, let us not take up the record with that. But it is all right.

We will take a five minutes' recess waiting for a witness. 362

(There was a short recess taken.)

Trial Examiner Furnas: Are you ready to proceed?

Mr. Morgan: Yes. We have Mr. Blake here.

Trial Examiner Furnas: Mr. Reporter, you will note that the recess is ended.

Will you please come forward? What is your name?

Mr. Blake: David C. Blake.

Trial Examiner Furnas: Are you ready for your witness to be sworn? 363

Mr. Morgan: Yes, Your Honor.

DAVID C. BLAKE was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Trial Examiner Furnas: Proceed.

Direct Examination by Mr. Morgan:

Q. Mr. Blake, you live here in Wilmington? A. That is right.

364 *David C. Blake—For the Commission—Direct*

Q. What is your occupation or business? A. I am in the wholesale drug business, sales manager.

Q. Sales manager. What firm is that? A. N. B. Danforth, Inc.

Trial Examiner Furnas: Just a minute. Do you want his street address?

Mr. Morgan: I am asking that next.

Trial Examiner Furnas: All right.

By Mr. Morgan:

365 Q. And the street address of that firm is what? A. Market and Second Streets.

Q. Market and Second Streets.

Mr. Sykes: I didn't get his first name. David?

Mr. Morgan: David C. Blake.

By Mr. Morgan:

Q. Mr. Blake, I am showing you here what we term Commission's Exhibit No. 8. I will get you to look at that carefully, the wording on it and marks you find on it, and then tell us what if anything that marking and wording indicates to you regarding that product.

366

Mr. Sykes: You are not referring to the ink marks, are you?

Mr. Morgan: No.

Trial Examiner Furnas: I have noticed that all along.

By Mr. Morgan:

Q. Just disregard the ink marks.

Trial Examiner Furnas: Any writing with pencil or ink.

Mr. Morgan: Not at all. That is just docket stuff. It doesn't mean anything.

Trial Examiner Furnas: I have noticed that all morning.

Mr. Sykes: So have I but I haven't called attention to it.

A. Well, this is a roll of toilet tissue put out by the A. P. W. Products Company, A. P. W. Paper Company, at Albany, who make the Red Cross toilet tissue.

By Mr. Morgan: 368

Q. State whether or not the sign of the Red Cross and the words "Red Cross" as appearing on that exhibit—does that mean anything to you? A. Well, no, I don't know that it does.

Q. State whether or not that sign and the words "Red Cross" would or would not mean that that product is approved or sponsored by the Red Cross? A. Well, it wouldn't indicate to me that it was sponsored by the Red Cross; no, sir.

Q. Approved? How about approved? A. Well, my answer to that would be based on the fact that we have other Red Cross products in our business and we never associate the Red Cross particularly as something that the Red Cross 369
has approved before they will be put out as a Red Cross—or the name—or use the name "Red Cross."

Q. You say you sell various Red Cross products in your store? A. Well, we handle the Johnson & Johnson Red Cross surgical dressings.

Q. Over how long a period of years have you been selling products that bear the Red Cross? A number of years, perhaps? A. Of course, Johnson & Johnson products have been on the market for a long while. I don't know the number of years. We have had them ever since I have been down there.

Q. You have been selling these products for a good many years, have you, probably? A. Johnson & Johnson products, yes.

Q. Have you sold this product, towels or toilet tissue, of the A. P. W. Paper Company? A. I don't know whether we handle this particular product or not, myself.

Q. Well, now, Mr. Blake—— A. Does it have a number, a stock number?

Q. I don't know about that, sir. I wouldn't know. In these sales, you mean these are sales over the counter to the general run of customer? A. I am speaking of whole-
371 sale now to other dealers.

Q. Oh, is your wholesale—— A. Yes.

Q. Oh, I see. You are not a retailer, then? A. We have a retail unit, but I am not associated with it.

Q. Have you ever had any contacts with the consuming public or purchasing public in connection with the sale of products bearing the Red Cross label? A. Well, you mean have I myself ever sold any Red Cross products to the consumer?

Q. Yes; to the purchaser; to the purchaser. A. Well, the few hours I put in our retail department I have sold Red Cross bandages, things like that, the Johnson & Johnson's
372 line.

Q. Over how long a period of years was that? A. Well, I have been down there 29 years and I have put some time in the retail business since I have been there.

Q. During those 29 years in which you have sold from time to time to the retail trade products bearing the Red Cross label, have you ever had any opportunity of getting the reaction of the public as to what they understand the Red Cross to mean on a product? A. I can't say that I have.

Mr. Morgan: That is all.

Trial Examiner Furnas: Cross examine.

Cross Examination by Mr. Sykes:

Q. Mr. Blake, Red Cross is used in connection with the sale of a lot of products besides toilet paper; isn't it? A. I don't know how many. I know it is used.

Q. How about the Red Cross shoes? A. I don't know, sir.

Q. How about the Red Cross mattress? A. I am not familiar with it.

Q. You are not familiar with that. You are familiar with Johnson & Johnson's products? A. Yes. They also have a Red Cross toothache outfit now. 374

Q. How about tooth powder? Is there a Red Cross tooth powder? A. I can't recall that.

Q. Toothpaste? A. Not that I know.

Q. You have seen it used on drug stores? A. It has been; yes, sir.

Q. In various parts of the country you have seen that? A. I am only familiar with one case. That is here in Wilmington.

Q. Where? A. Here in Wilmington.

Q. What was that case? A. There was a pharmacy at Eighth and Dupont within the last four or five years that they used to name the Red Cross Pharmacy. It is not there 375 now and the store has changed its name.

Q. Well, is your research sufficient to say whether or not the Red Cross has been used for many years in connection with medical products? A. Do you mean am I familiar how many years the name has been used on medical products?

Q. Yes. A. Well, the only line that I know of long standing is Johnson & Johnson's, that I am familiar with.

Q. Well, do you know that Red Cross mark has been used throughout Europe for many hundreds of years? A. I didn't understand, sir.

Q. Did you know that Red Cross mark has been used throughout Europe for many hundreds of years in connection with pharmacies? A. No, sir.

Q. Your research hasn't enabled you to state that? A. No, sir.

Q. I suppose you are selling these Red Cross toilet papers at wholesale? You don't make any representation at all that you are acting for the Red Cross; do you? A. No, sir.

Q. Or that it is a Red Cross product? A. No, sir.

Q. Or that the Red Cross has any financial interest in it? A. No, sir.

377 Q. Or that the Red Cross obtain a royalty or a percentage? A. No, sir.

Q. Or that it is endorsed, approved, and sponsored by the Red Cross? A. No, sir.

Q. Or that the products are manufactured in accordance with sanitary standards prescribed by the Red Cross? A. We have never used that as a selling point, nó.

Q. Are manufacturing mills operated by the Red Cross? A. No, sir.

Mr. Morgan: I didn't get the answer to that last question.

Trial Examiner Furnas: Read the answer.

378 (Answer read as follows:

"A. We have never used that as a selling point, no.")

By Mr. Sykes:

Q. Or that the A. P. W. Paper Company is financially connected or affiliated with or receives financial support from the Red Cross? A. No, sir.

Mr. Sykes: That is all.

Mr. Morgan: Just one question.

Trial Examiner Furnas: Anything further?

Mr. Morgan: One question I wanted to ask him.

Trial Examiner Furnas: All right.

Redirect Examination by Mr. Morgan:

Q. Mr. Blake, in handling this product, or these products, over a period of years, have you ever considered the question as to whether or not this mark is being used with the approval or consent of the Red Cross?

Mr. Sykes: Object to that as irrelevant——

380

A. No.

Mr. Sykes: —and immaterial.

Trial Examiner Furnas: If the witness knows, he may answer.

Mr. Morgan: If he knows. I am asking him the question.

Trial Examiner Furnas: Yes; if you know, you may answer the question.

The Witness: Will you put the question again, please.

Mr. Morgan: Read the question back, will you, Mr. Reporter.

381

Trial Examiner Furnas: Read the question to the witness.

(Question read by Reporter.)

A. No, I never have. In other words, I wouldn't—you mean would I question before we handle the product whether or not the Red Cross had approved it?

Q. Well, not necessarily question it, but did you have any thought about it? What do you think about it? What is your reaction to that? A. Well, I wouldn't question it. I mean, I wouldn't—as a matter of fact, I doubt if it would

382 *David C. Blake—For the Commission—Recross*

enter my mind whether the Red Cross had approved it or disapproved it.

Q. You wouldn't want to say, then? A. I beg your pardon?

Q. You wouldn't say, then, one way or the other? A. No.

Mr. Morgan: That is all.

Trial Examiner Furnas: Anything further?

Recross Examination by Mr. Sykes:

383 Q. If a product is marked "Trademark, Red Cross," and "labeled and registered in the United States Patent Office by the A. P. W. Paper Company, Inc., manufacturer," are you familiar with that? A. You mean am I familiar with that tradename, trademark, on the package?

Q. Yes. Yes. A. Yes.

Q. And you are familiar with the fact that it is marked as a trademark "Registered in the United States Patent Office"? A. Practically all trademarked items are of that nature that we handle.

Q. And you know that the A. P. W. Paper Company was the manufacturer? A. Yes.

384

Mr. Morgan: What? I didn't get that last question.

Mr. Sykes: "You know that the A. P. W. Paper Company was the manufacturer?"

That is all.

Mr. Morgan: That is all.

Trial Examiner Furnas: You are excused.

(Witness excused.)

Trial Examiner Furnas: Have you any other witnesses, Mr. Morgan?

Mr. Morgan: There are three more beginning at 1:30. 385

I move we take an adjournment to 1:30, Mr. Examiner.

Trial Examiner Furnas: Have you got witnesses, sir, coming at 1:30?

Mr. Morgan: One-thirty, one-forty-five, and two.

Trial Examiner Furnas: Mr. Reporter, you will note that when this hearing adjourns for lunch it will adjourn to reconvene in this room at 1:30 p. m.

The hearing is now adjourned.

386

(Whereupon, at 12:10 o'clock p. m., a recess was taken until 1:30 o'clock p. m. of the same day.)

AFTERNOON SESSION

1:30 P. M.

Trial Examiner Furnas: Gentlemen, are you ready to proceed?

Mr. Morgan: Yes, Your Honor.

Trial Examiner Furnas: Mr. Reporter, you will note that the hearing is now convened at 1:30 p. m. as per adjournment. 387

What is your further pleasure, gentlemen?

Mr. Morgan: I have a witness here, Mr. Baker.

Trial Examiner Furnas: All right. Will you step forward.

What is your name, please?

Mr. Baker: Ashland L. Baker.

Trial Examiner Furnas: Are you ready for your witness to be sworn?

Mr. Morgan: Yes, Your Honor.

388 *Ashland L. Baker—For the Commission—Direct*

ASHLAND L. BAKER was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Morgan:

Q. Your name is Mr. Ashland T. Baker; is that right? A. Yes, sir; that is right.

Q. And what business are you in?

Trial Examiner Furnas: Wait a minute. Ashland T. Baker?

389 The Witness: L.

Mr. Morgan: L. I had it wrong. I am sorry.

The Witness: It is "T." on the subpoena, too.

Trial Examiner Furnas: Well, just let me have that.

By Mr. Morgan:

Q. What is your business, Mr. Baker? A. Operate a service station.

Q. What address is that? A. 303 South Market Street.

Q. That is in Wilmington? A. Wilmington; yes, sir.

Q. Mr. Baker, I am going to show you what we designate here as Commission's Exhibit No. 10, get you to look at
390 this, note the printing and the markings on it, any marks you see, just look it over, and after you finish looking it over, why, tell the Commission here what you think it is or what impression it makes on you, if any, what your understanding of it is. A. Well, it says "Red Cross", which I might associate with the American Red Cross, but I can truthfully say I never have. I have seen it in the food fairs where we buy our toilet paper and towels, but that is the first thing that comes to my mind.

Q. What? A. That is about the first thing that used to come to my mind when I saw it. But I didn't pay much attention to it. I didn't use it.

Q. You mean the first thing it suggests is the Red Cross? Is that what you mean? A. It seems as though it does to my mind; yes, sir.

Q. A little further along there, state whether or not, looking the labeling, the emblem, the marking, language, on that exhibit——

Mr. Sykes: It now appears that he hasn't bought any of it.

Trial Examiner Furnas: What is it?

Mr. Sykes: It appears that he hasn't bought any of this, which shows that he hasn't been misled in any way. 392

Trial Examiner Furnas: That is a matter to develop on cross examination.

Mr. Sykes: I want to object to the testimony as not within the pleadings, and I move to strike.

Trial Examiner Furnas: All right. Objection overruled. Exception granted.

Proceed.

By Mr. Morgan:

Q. Would that emblem and label on there, would or would not it suggest to you any approval by the Red Cross of that product? A. No, sir; I can't say that I believe the Red Cross had anything to do with it. 393

Q. Or endorsed by the Red Cross? A. No, sir; I don't.

Q. You know what the Red Cross is? Just forget that exhibit for a moment? A. Yes, sir; I do.

Q. And that Red Cross that you say you know, that has an emblem; does it? A. Yes, sir.

Q. What is that emblem? A. It is just like that one, I believe.

Trial Examiner Furnas: By "that one", you are referring to the one here, Commission's Exhibit 10?

The Witness: Yes, sir.

394 *Ashland L. Baker—For the Commission—Cross*

By Mr. Morgan:

Q. So far as you would say, that is the same emblem? A. It looks exactly the same to me.

Mr. Morgan: That is all.

Trial Examiner Furnas: Cross examine.

Cross Examination by Mr. Sykes:

Q. Mr. Baker, do I understand that you haven't bought any of these towels similar to this exhibit? You have never bought any of them? A. No, sir; I have never bought any of them.

395 Q. And you have never bought any of this tissue, Exhibit 8? Is that 8?

Mr. Morgan: This is 7. That is 7. This is 8.

Mr. Sykes: I know he hasn't bought that because that isn't sold generally.

By Mr. Sykes:

Q. You haven't bought any of this tissue, Exhibit 8? A. No, sir.

Q. Have you seen the Red Cross used on other articles beside these marks, which appear to be a trademark on this Exhibit 10? A. I don't know of any offhand. No, sir; I

396 can't say that I do.

Q. Did you ever buy any Red Cross shoes? A. No, sir; I never bought any.

Q. Any Red Cross mattresses? A. No, sir.

Q. Did you buy any——

Trial Examiner Furnas: I think the witness answered the question. He said he had never seen any of them.

By Mr. Sykes:

Q. Did you ever buy any of Johnson & Johnson's products? A. No, sir.

Q. Bandages? A. I have bought bandages, but I have never paid much attention to them. I don't specify any specific kind when I buy any. We just buy the first-aid kits for the station, and we don't ask for any particular kind; buy what they give us as long as it looks right.

Q. You say that the Red Cross brings to your mind the Red Cross Society. Does it carry any significance to your mind that the American Red Cross Company manufactures these articles? A. No, sir; I wouldn't say so.

Trial Examiner Furnas: The witness testified to that. 398

Mr. Morgan: He didn't say that.

Trial Examiner Furnas: He said so on direct, that he didn't think so.

Mr. Sykes: That is all.

Trial Examiner Furnas: Anything further?

Mr. Morgan: Just one question.

Trial Examiner Furnas: All right.

Redirect Examination by Mr. Morgan:

Q. Mr. Baker, whether you ever bought——

Trial Examiner Furnas: Is what?

399

Q. I say whether you ever bought any product like that or any of the other products this gentleman has asked you about, I understood you to say that the emblem on there is what suggests the Red Cross to you? A. It does, because it is so conspicuous or something. I was—I noticed it Friday night when I was in the food fair. They had a large display of these towels on the rack, and right away it comes to your mind, but you don't know who makes the paper or anything, but we passed it by and bought some other kind of paper.

Mr. Morgan: That is all.

Trial Examiner Furnas: Anything further?

Mr. Sykes: No, sir.

Mr. Morgan: That is all.

Trial Examiner Furnas: You are excused.

(Witness excused.)

Trial Examiner Furnas: Have you got any more witnesses?

Mr. Morgan: I have two more if I can find them.

Trial Examiner Furnas: See if you can find them.

Mr. Morgan: I will go find them.

401 Trial Examiner Furnas: We will have a five minutes' recess, Mr. Reporter.

(There was a short recess taken.)

Trial Examiner Furnas: All right, Mr. Reporter, you will note that the recess has ended. We will now proceed with the hearing.

Is your witness present, Mr. Attorney?

Mr. Morgan: Yes, sir. This is Miss Miriam A. Braddock, Mr. Examiner.

Trial Examiner Furnas: Miss or Mrs.?

Mr. Morgan: Miss. Miriam Braddock.

Trial Examiner Furnas: Just step forward, please. Are you ready for your witness to be sworn?

402 Mr. Morgan: Yes, I am, Your Honor.

MISS MIRIAM A. BRADDOCK was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Morgan:

Q. Miss Braddock, you live here in Wilmington? A. Yes.

Q. What is your occupation or calling? A. Secretary to the librarian of the Public Library in Wilmington.

Q. That is the Wilmington Public Library? A. Yes.

Q. And where is that located? A. Tenth and Market Streets.

Q. Tenth and Market. Miss Braddock, I am going to show you Commission's Exhibit 8 here and get you to look at the labeling and markings on that, look it over——

Trial Examiner Furnas: Outside of that which is in pen.

Q. And having done so, tell us what reaction—what impression you get from that. 404

Mr. Sykes: I think the witness should examine the entire exhibit.

Mr. Morgan: I told her to look it over. Certainly. She is doing that.

Trial Examiner Furnas: But the pen writing.

By Mr. Morgan:

Q. Yes; disregard any pen work.

Trial Examiner Furnas: Yes.

405

Q. That has nothing to do with it at all. And, while you are at it, you might look at this one, too, please, ma'am. The same way. This is Commission's Exhibit——

Trial Examiner Furnas: Eleven.

Q. —No, 10. Now having looked at those exhibits, examined them, what impression do they make on you? What is your opinion as to them, what they are, and so forth? A. Roll of paper towels and toilet tissue, and I just observe that they are manufactured by the A. P. W. Paper Company and their brand name is "Red Cross Towel."

Q. Now, tell the Examiner whether or not, in the light of your examination of those products, you think or do not think that they have some connection with the Red Cross? A. No. To my mind that——

Q. Ma'am? A. The Red Cross is just the trade name of the A. P. W. Paper Company. I wouldn't connect it with the Red Cross organization.

Q. State whether or not that marking, labeling, would indicate a Red Cross standard for the product? A. No.

Q. Or Red Cross approval? A. No.

407 Q. Now, to forget those exhibits for a moment, you are familiar with the Red Cross, the American Red Cross? A. Yes.

Q. Do you belong to the Red Cross? A. Yes.

Q. What is the emblem of the Red Cross to which you belong? A. The Red Cross.

Q. That Red Cross? A. Well, I can't say that they are both the same type crosses, but I know it is a red cross.

Q. So far as you know, would you say they are identical? A. Yes, I would say so.

Q. And in looking at that Red Cross would that cause you to think of the Red Cross Society? A. No.

Mr. Morgan: That is all.

408 Trial Examiner Furnas: Cross examine.

(No response.)

Trial Examiner Furnas: You are excused.

(Witness excused.)

Trial Examiner Furnas: Are you looking for another witness, Mr. Morgan?

Mr. Morgan; I have got one more.

Trial Examiner Furnas: All right. We will have a 5 minutes' recess.

Mr. Morgan: She isn't due until 2 o'clock.

409

(There was a short recess taken.)

Trial Examiner Furnas: Mr. Reporter, you will note that the recess has ended.

What is your further pleasure, Mr. Attorney?

Mr. Morgan: I have another witness here.

Trial Examiner Furnas: What is the name of the witness?

Mr. Morgan: Mrs. John L. Kusching.

Trial Examiner: How do you spell that?

Mr. Morgan: K-u-s-c-h-i-n-g.

Is that right?

410

Mrs. Kusching: That is right.

Mr. Morgan: Mrs. John L. Kusching.

Trial Examiner Furnas: Are you ready for your witness to be sworn?

Mr. Morgan: Yes. Yes, Your Honor.

MRS. JOHN L. KUSCHING was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Morgan:

Q. Mrs. Kusching, I want to show you——

411

Mr. Sykes: May we have her address?

Mr. Morgan: Oh, I am sorry. I thought I brought that out. I am sorry.

Trial Examiner Furnas: What is that? Oh.

By Mr. Morgan:

Q. Your address here in Wilmington is—— A. It is in Hillcrest.

Q. Hillcrest. Is that? A. 223.

Q. 223 what? A. 223 Chestnut Avenue.

Q. Chestnut Avenue? A. Yes.

Q. Hillcrest. Is that a suburb—— A. Suburb.

412 *Mrs. John L. Kusching—For the Commission—Direct Examination on Voir Dire*

Q. —of Wilmington? A. Yes.

Q. Thank you, ma'am.

I wanted to show you two Commission's exhibits here. This is Commission's Exhibit 8, this one, and this is Commission's Exhibit 10 in this matter, and get you to look those over and the wording on them and any marks or labels and then after you have done so tell His Honor just in your own way what that means to you, what it indicates to you, what it is, and so forth, just in your own way.

413 Mr. Sykes: May I have a question on voir dire?

Trial Examiner Furnas: Yes.

Examination on Voir Dire by Mr. Sykes:

Q. Have you ever purchased articles of this nature which are before you? A. Yes.

Trial Examiner Furnas: Just with your permission, I will explain to the witness that disregard all writing by the pen and ink.

Mr. Morgan: Yes; any writing on that by pen.

Trial Examiner Furnas: That is satisfactory to you gentlemen, is it?

Mr. Sykes: All right.

414 Mr. Morgan: Yes; quite so. That is docket marking, doesn't mean a thing, nothing at all.

Trial Examiner Furnas: Yes, that has nothing to do with the exhibits.

Direct Examination (Continued):

A. Well, the articles I am familiar with. I can't say anything special about them.

By Mr. Morgan:

Q. I will ask you whether or not the emblem, Red Cross, or the words "Red Cross," or any language or marking on

those exhibits would suggest to you that they are approved and endorsed by the Red Cross? A. Well, I had never thought of them that way.

Q. I ask you whether that labeling or wording on those exhibits would or would not suggest to you that they are in conformance with the Red Cross standard, such articles?

Mr. Sykes: Red Cross standard for such articles?

Mr. Morgan: Standard.

Mr. Sykes: I object to it as assuming that there is a Red Cross standard for such articles.

Trial Examiner Furnas: I think that—— 416

Mr. Morgan: Just strike "for"——

Trial Examiner Furnas: —that counsel for Respondent's objection is well taken. I believe there is a standard; I don't know. There has been nothing to show that there is a standard.

Mr. Sykes: Nothing to show.

Trial Examiner Furnas: Objection sustained.

Mr. Morgan: I know, but, Your Honor, it is alleged in the complaint. That very aspect is alleged in the complaint——.

Trial Examiner Furnas: What paragraph?

Mr. Morgan: —and denial.

Trial Examiner Furnas: If it is in the complaint, 417 why, that will change the Examiner's ruling. I didn't remember that it was.

Mr. Morgan: Wait a minute. I will get that.

Trial Examiner Furnas: What paragraph?

Mr. Morgan: Wait just a second.

Mr. Sykes: Paragraph 9?

Mr. Morgan: Just to help the thing along, paragraph 7.

Mr. Sykes: Seven.

Trial Examiner Furnas: What does it say, please, in reference to that?

418 *Mrs. John L. Kusching—For the Commission—Direct*

Mr. Morgan: That Respondent's said products are used in the Red Cross and Respondent's products are manufactured in accordance with sanitary standards prescribed by the Red Cross.

Trial Examiner Furnas: All right. I will change my ruling in view of that fact.

Mr. Sykes: Yes. His question referred to a standard for these particular products.

Trial Examiner Furnas: Just read it, please, Mr. Reporter.

419 (Question read by Reporter.)

Trial Examiner Furnas: Now, I understand that Respondent objects to that question.

Mr. Sykes: It is assuming that there is a Red Cross standard for such articles.

Trial Examiner Furnas: In view of the reading of the complaint, your objection is overruled. Exception granted.

By Mr. Morgan:

Q. Will you answer now?

Trial Examiner Furnas: The record will show
420 that the Examiner has changed his ruling there, does it?

The Reporter: Yes.

Trial Examiner Furnas. And the reason for changing it? All right.

A. I feel that anything carrying the Red Cross—I classify the Johnson & Johnson products and papertowels, and so forth, as having been used by the Red Cross organization. They must be good enough for me.

Mr. Morgan. That is all.

Trial Examiner Furnas: Cross examine.

Cross Examination by Mr. Sykes:

Q. You think that they have been used by the Red Cross because they have the Red Cross on them? A. I never spent any time thinking about it, but just the appearance of it. They are products that I would——

Q. When was the first time that you thought of that? Today when you came in here? A. Yes.

Mr. Morgan: What is the question?

Mr. Sykes: I asked her the first time she thought of that answer. She says today when she came in here. 422

By Mr. Sykes:

Q. As a matter of fact, before you came here you hadn't given any consideration to the matter at all? A. No. I had callers at the door—I don't know how long it has been; maybe six months, quite a while ago, asking me what kind of paper——

Q. You have used—— A. —towels I used.

Trial Examiner Furnas: Let the witness finish her statement.

Q. You have used this Red Cross toilet tissue under the trademark of A. P. W. Paper Company, manufacturer? 423
A. That is right.

Q. How long? A. I don't use it all the time. I just——

Q. How long have you used it? A. I can't say that.

Q. Have you any idea?

Trial Examiner Furnas: The examiner suggests to the witness to give an approximate answer; it will be satisfactory to counsel.

Mr. Sykes: Yes.

A. Well, I have used it off and on for nine years.

424 *Mrs. John L. Kusching—For the Commission—Redirect*

By Mr. Sykes:

Q. Nine years? A. Yes.

Q. This roll of towels under the trademark "Registered United States Patent Office, A. P. W. Paper Company, Albany, New York," have you used those for some time? A. I only use those when I can't get the brand I like.

Q. What is the brand you like? A. I like Scott.

Q. But how long have you used this when you couldn't get the brand that you liked? A. You don't understand me. I didn't get those. When the man called I told him I
425 was using them because they were cheaper when I bought them at the store at that particular time.

Q. Yes. And the reason you bought them was because they were cheaper and not because there was a Red Cross—Red Cross mark on the face of it; is that right? A. That is right.

Mr. Sykes: That is all.

Mr. Morgan: Just one question.

Trial Examiner Furnas: You are not through; are you?

Mr. Sykes: Yes.

Mr. Morgan: Just one question I want to ask.

426 *Redirect Examination by Mr. Morgan:*

Q. Mrs. Kusching, in going into a store as a shopping lady to buy this or anything else, any product you might see on a shelf, you would be guided, would you not, by the large label? You would not take it down and read all the fine print before you bought it; would you? A. Well I——

Mr. Sykes: I object to that. He is not asking what occurred. He is asking what might——

Mr. Morgan: Your Honor——

Trial Examiner Furnas: Just a minute. Finish your statement, please.

Mr. Sykes: My objection is the question hasn't asked what has happened or what struck this witness' mind, but what might.

Mr. Morgan: I say that I have asked the question about the fine labeling by reason of several questions Mr. Sykes has asked.

Trial Examiner Furnas: That is right. I think you have gone into that. I am going to overrule the objection and grant you an exception.

Mr. Morgan: Read the question.

(Question read.) 428

Trial Examiner Furnas: Now, when counsel refers to "this" you have reference to Commission's Exhibit No. 10?

Mr. Morgan: Commission's Exhibit 10.

Trial Examiner Furnas: Let the record show it is Commission's Exhibit No. 10 that you have reference to.

Mr. Morgan: Yes. I think she answered the question.

Trial Examiner Furnas: I didn't hear it. Did you answer it?

A. Well, the only thing I notice would be the Red Cross towel approved by the Good Housekeeping. That is about the only thing I look for. 429

Mr. Morgan: That is all.

Mr. Sykes: Just one or two things occurred to me.

Recross Examination by Mr. Sykes:

Q. You have seen the Red Cross used on Johnson & Johnson's products; haven't you? A. That is right.

Q. Have you used a Red Cross mattress? A. No.

Q. Did you ever buy Red Cross shoes? A. No.

430 *Mrs. John L. Kusching—For the Commission—Redirect*

Q. You are familiar with the advertising—— A. I know of them.

Q. —of Red Cross shoes? Do you associate the Red Cross shoes with the Red Cross—American Red Cross? A. Not directly, but I thought the advertising was more for the nurses.

Q. Do you think that those products and products which are before you as witnesses were——

Trial Examiner Furnas: Exhibits 10 and 7; is it?

Mr. Morgan: Seven and ten, I think.

431 Mr. Sykes: Seven and ten.

By Mr. Sykes:

Q. Were manufactured in mills operated by the American Red Cross Company? A. Oh, no.

Q. Do you think that there is involved in this the question of American Red Cross being financially interested in these companies? A. No.

Q. Or in the products? A. No.

Mr. Sykes: That is enough.

Mr. Morgan: Just one more question.

432 *Redirect Examination by Mr. Morgan:*

Q. You know the American Red Cross, don't you, Mrs. Kusching; that is, what it is? A. Yes.

Q. The Red Cross has an emblem; does it not? A. Yes.

Q. What? A. Yes.

Q. You are familiar with that emblem, are you not? A. Yes.

Q. I will ask you if the emblem of the Red Cross to your mind isn't identical with the emblem on those packages,—— A. Yes.

Q. —Commission's Exhibit 7 and 10?

Mr. Morgan: That is all.

Trial Examiner Furnas: Anything further? You are excused.

Mr. Morgan: That is all.

(Witness excused.)

Trial Examiner Furnas: What is your further pleasure? Be seated, gentlemen.

Mr. Morgan: Your Honor please, I move that the hearing here in Wilmington be adjourned to 1:30 o'clock tomorrow afternoon, the 16th, at Baltimore. 434

Trial Examiner Furnas: To what?

Mr. Morgan: To Baltimore.

Trial Examiner Furnas: Can you give the room and the——

Mr. Morgan: Yes. Wait a second. I think I have it. Wait a minute.

Yes, it is Room 509, Post Office Building, Baltimore, Md.

(There was a discussion off the record.)

Trial Examiner Furnas: On the record.

Mr. Reporter, you will note that when this hearing adjourns it will adjourn to reconvene in the City 435 of Baltimore, State of Maryland, at 1 o'clock p. m., on June 16th, in Room 509, Federal Building.

Mr. Morgan: That is right.

Trial Examiner Furnas: Is there anything further, gentlemen? If not, Mr. Reporter, you will note that the hearing adjourned in the City of Wilmington, Del., at 2:15 p. m.

The hearing is now adjourned.

(Whereupon, at 2:15 p. m., June 15, 1942, the hearing was adjourned.)

436

Transcript of Hearing, Dated June 16th, 1942, Baltimore, Maryland

BEFORE THE

FEDERAL TRADE COMMISSION

Docket No. 4747

437

IN THE MATTER OF

of

A. P. W. PAPER COMPANY, INC., a corporation.

Room 509, Federal Building,
Baltimore, Md.,
June 16, 1942.

438

Met, pursuant to adjournment, at 1 p. m.

Before:

MILES FURNAS, Trial Examiner.

Appearances:

MARSHALL MORGAN, Esq., appearing for the Federal Trade Commission.

EMERY H. SYKES, Esq. (Sullivan & Cromwell), 48 Wall Street, New York, N. Y.), appearing for the Respondent.

PROCEEDINGS

Trial Examiner Furnas: The hearing will come to order.

CHARLES E. WITLER was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Mr. Sykes: My general objection that I made in Albany, I assume, is carried on in all these proceedings.

Trial Examiner Furnas: I so ordered it.

Mr. Sykes: It is in the record. 440

Trial Examiner Furnas: If counsel for the Respondent at this time desires to renew his objections made at Albany, the Examiner will be glad to have him do so, but the Examiner believes it is in the record, but to be sure, if you think there is any doubt, I would suggest that you do so.

Mr. Sykes: It appeared on the record that I thought we had stated, possibly not on the record, but intending that it should go on the record, an objection which should apply to all these witnesses.

Trial Examiner Furnas: Yes. Is counsel for the Respondent agreeable that the agreement we had yesterday as to a general objection will be carried out in this hearing here today? 441

Mr. Sykes: Quite so.

Trial Examiner Furnas: It is so ordered, Mr. Reporter, that the objections made by counsel for the Respondent yesterday will be carried out in this hearing here today.

All right, gentlemen, we will proceed.

Direct Examination by Mr. Morgan:

Q. Mr. Witler, what is your business, please, sir? A. Paint manufacturer.

442 *Charles E. Witler—For the Commission—Direct*

Q. Sir? A. Paint business.

Q. Paint business?

Mr. Sykes: Paint?

Mr. Morgan: Paint business, he said.

By Mr. Morgan:

Q. And you are with what firm? A. Hanline Brothers.

Q. Hanline Brothers. And where are they located, sir? A. 1400 Warner Street.

443 Q. 1400 Warner Street. Yes, sir. Mr. Witler, did you ever hear of the Red Cross? A. Yes, I have.

(Discussion off the record.)

Trial Examiner Furnas: We will proceed.

Mr. Morgan: I believe I asked Mr. Witler if he had heard of the Red Cross. His answer was he had; wasn't it?

The Witness: Yes.

By Mr. Morgan:

Q. What does the Red Cross mean or typify to you, Mr. Witler, just in your own language—the American Red
444 Cross? A. Well, taking care of the wounded and sick and needy.

Q. Would you say, to your knowledge, that the Red Cross has an emblem of any kind? A. Yes, the Red Cross.

Q. What is that emblem? A. The Red Cross.

Q. Any words go with it? Do you know? A. Not outside of the Red Cross; the words "Red Cross".

Q. The words "Red Cross"? A. Yes.

Q. Mr. Witler, I show you this exhibit here, which is Exhibit No. 10, and get you to look at that, the labeling on it, any insignia except ignore the pen writing, and look at it carefully and then tell us what that indicates it is to you.

Mr. Sykes: I think the witness should be directed to read the entire paper.

Trial Examiner Furnas: Let us let him look it over carefully.

(Witness examines exhibit.)

A. Of course, when you read these words and the insignia here you think of the Red Cross. Naturally, when you come down to the bottom and see this "A. P. W. Paper Company," then it puts a question in your mind whether it is really handled by the Red Cross or whether it is through some 446
other medium it is handled.

Q. Tell me, would you or would you not, after examining that product, that exhibit, think that the Red Cross might be benefited by the sale of that product?

Mr. Sykes: That is objectionable as dealing not with facts.

Trial Examiner Furnas: It is what?

Mr. Sykes: Doesn't deal with facts. He isn't asking a question of fact, but he is asking for speculation.

Mr. Morgan: I am asking what he means by it.

Trial Examiner Furnas: The question he just 447
asked the witness is as to what his opinion is——

Mr. Morgan: What his opinion is.

Trial Examiner Furnas: —as I understand it, on the matter.

Objection overruled and exception granted.

You may answer the question.

A. Naturally, I would, because I believe several months ago —I don't know whether you are the gentleman that was in my office or not.

448 *Charles E. Witler—For the Commission—Cross*

By Mr. Morgan:

Q. No, sir. A. But someone was, and they asked me the same thing, and at that particular time they straightened me out and told me it wasn't the Red Cross; it was made by this Paper Company. Naturally, now, I wouldn't take it as that because I know.

Q. But until you were told better you thought otherwise? A. I did, yes.

Q. Would the existence of the World War, say, at this time strengthen that view of yours, possibly? A. No, I don't think it would.

449

Mr. Morgan: That is all.

Trial Examiner Furnas: Cross examine.

Cross Examination by Mr. Sykes:

Q. Have you examined the paper and seen that that is a trademark of the A. P. W. Paper Company? A. I did, yes.

Q. That carries the significance to your mind that it has been registered in the Patent Office as a trademark? A. That is right.

Q. Yes. Does that carry to your mind any significance that it represents the trademark of the A. P. W. Paper Company? A. Yes, it does; yes.

450

Q. It does. And all you mean to say is that when you see the Red Cross standing alone, that carries an impression of the Red Cross, of the National Red Cross—— A. That is right.

Q. —American Red Cross Society? But if you read other things with it you realize that it doesn't carry that significance? A. That is right.

Q. Do you have any reason to believe that the Red Cross is engaged in selling products to people? A. No, I do not.

Q. You know that it is a charitable enterprise—— A. Yes.

Q. —supported by all of the people of the country? A. Yes.

Q. Did you have any thought as to whether or not in that charitable enterprise supported by everyone they undertook to exploit the products of any particular individual in the country? A. No, I did not.

Q. Did you ever have any thought on that as to wnether the Red Cross did or did not? A. No, I did not think whether they did or did not.

Q. Have you seen the Red Cross used on anything except on this particular paper which is shown you, Mr. Witler? A. 452
It seems to me that I have. I believe there is some absorbent cotton that has a red cross on it; isn't there, or something of that kind? I don't know whether it is a red cross or not.

Q. Johnson & Johnson?

Mr. Morgan: Now, may it please Your Honor, I have not objected heretofore, but counsel for the other side has repeatedly brought into the record the name of Johnson & Johnson, and they are not in this case, and I regard that as improper examination. I object to it, Your Honor. They are not in this case.

Mr. Sykes: This is cross examination.

Mr. Morgan I know, but I don't think that is in this case. 453

Trial Examiner Furnas: Let us go off the record a minute. Is it satisfactory, gentlemen, to go off the record?

Mr. Sykes: Yes.

Trial Examiner Furnas: Off the record, Mr. Reporter.

(Discussion off the record.)

Trial Examiner Furnas: On the record.

State your objection, Mr. Morgan, counsel for the Commission.

454 *Colloquy*

Mr. Morgan: I objected to counsel bringing forward in cross examination the name of another manufacturing company which is not in this case and is not mentioned in the complaint and is no part of the case.

Trial Examiner Furnas: Do you wish to make a statement for the record?

Mr. Sykes: I call the court's attention to the fact that I am cross examining, and on cross examination I can ask him anything which serves to test his view.

Trial Examiner Furnas: Yes.

455 Mr. Sykes: If I have reason for using the name of Johnson & Johnson it is because that is a product which has used this mark on its own products long before the American Red Cross really was of any moment.

Mr. Morgan: Wait just a moment.

Mr. Sykes: That is——

Trial Examiner Furnas: —just a minute until he finishes his statement.

Go ahead.

Mr. Sykes: If I don't use the name it cuts me off from what I consider my proper right of cross ex-

456 amination.

Trial Examiner Furnas: Now, what is it, Mr. Morgan?

Mr. Morgan: Are we on the record now?

Trial Examiner Furnas: Yes.

Mr. Morgan: I further object, may it please the court, to counsel's statement here that Johnson & Johnson used this mark long before the Red Cross or anything in that——

Mr. Sykes: There is no testimony to that effect.

Mr. Morgan: I know there is no testimony but it is in the record.

Trial Examiner Furnas: The examiner is ready to rule, if you are through.

The objection is sustained and exception granted. Proceed.

Mr. Sykes: What was the question which was objected to? I will see if I can reframe it.

Trial Examiner Furnas: Read the question, Mr. Reporter.

(Record read by Reporter.)

By Mr. Sykes: 458

Q. Is it a concern from New Brunswick, N. J., that manufactures various things for use in hospitals? A. I really don't know that.

Q. You don't?

Mr. Morgan: Same objection there.

Q. Did you use it on—have you noticed it in connection with band aid?

Trial Examiner Furnas: With what?

Mr. Sykes: Band aid.

A. Well, I can't say that I have, no. 459

By Mr. Sykes:

Q. Well, did you ever run across Red Cross shoes? A. Yes, I have heard of those.

Q. And you know that the Red Cross is used in connection with Red Cross shoes; do you not? A. No, I do not.

Q. The name, though, is used? A. I know of the name "Red Cross."

Q. Yes. Did you use a Red Cross mattress? A. No.

Q. Did you ever see it used in connection with any food products? A. No, I don't think I have.

460 *Charles E. Witler—For the Commission—Redirect*

Q. Did you ever see it used in connection with milk?

Trial Examiner Furnas: With what?

Mr. Sykes: Milk, Red Cross milk.

A. No, I have not.

By Mr. Sykes:

Q. But I understand when you read the whole thing you do appreciate that that is a trademark of a manufacturing company?

461 Trial Examiner Furnas: Pardon me just a minute. When you say "the whole thing" you are referring to Commission's Exhibit 10, are you?

Mr. Sykes: Yes. Yes.

A. Yes.

Mr. Sykes: That is all.

Mr. Morgan: Just one or two questions.

Redirect Examination by Mr. Morgan:

Q. Mr. Witler, take the case of yourself, the average person, going to a store to buy a product that was exhibited to the view of the customer, you wouldn't ask any—in picking
462 out a product that you might want to buy, from its label, a brand that you might know, one that has attracted you, you wouldn't take it down and read all the little print on it; you would be guided by the large print; would you not? A. I would, indeed.

Mr. Sykes: Objection.

Trial Examiner Furnas: Wait before he answers.

Mr. Sykes: The objection is that he asked the witness what an average person would do.

Mr. Morgan: I asked him as to whether he as an average person——

Trial Examiner Furnas: I understood you to ask his opinion and also what the average person would do. He can tell what he would do but he cannot testify as to what the other fellow is going to do.

Mr. Morgan: Strike that as to the "average person."

Trial Examiner Furnas: Strike the question.

Mr. Morgan: As to the average person, and let it be restricted to this witness.

Trial Examiner Furnas: The witness can answer that, as to what he does himself.

464

By Mr. Morgan:

Q. And your answer is as to yourself. A. No, I do not.

Q. I will ask you this: whether or not in your view, say, this manufacturer that Mr. Sykes has called your attention to in that trademark would or could use the Red Cross mark without the consent or permission of the Red Cross Society?

Trial Examiner Furnas: What is that question? Read the question, please.

(Question read by Reporter.)

Mr. Sykes: Well, I object to that. He is asking for legal rights. 465

Trial Examiner Furnas: Yes. Sustained.

By Mr. Morgan:

Q. Put it this way: Is it or is it not your view that that mark is used with the permission of the Red Cross?

Mr. Sykes: Objected to as leading.

Trial Examiner Furnas: Well, he might—no, I am going to let him answer that if he can tell whether he thinks that the Red Cross is consulted, and whether they were asked if they could use it or not.

466 *Charles E. Witler—For the Commission—Recross*

Mr. Morgan: Yes, that is what I am asking him.

Trial Examiner Furnas: He may answer that, as to what his own views are.

Mr. Sykes: From an examination of the paper?

Trial Examiner Furnas: Well, that isn't the question. You can develop that on cross examination.

Mr. Sykes: I think his general views, of course, are of no importance.

Trial Examiner Furnas: Well, I don't know. We will see.

467 A. Well, I would take from this that this would be practically the same kind of paper that the Red Cross uses. That is my view; that is the way I look at that.

By Mr. Morgan:

Q. In view of the labeling? A. Yes.

Mr. Morgan: That is all.

Trial Examiner Furnas: Cross examine. Anything further?

Recross Examination by Mr. Sykes:

468 Q. Just why would you think that the Red Cross used that particular top? A. On account of the Red Cross.

Q. Merely for that reason? A. Yes.

Q. Merely for that reason. And that notwithstanding that the A. P. W. Paper Company has a trademark registered in that form? A. Well, as I told you before, after I take it and look at it and read it thoroughly I know right away that there is a manufacturing company that is producing this, but when you first—when I first look at it without reading the whole thing naturally—I was following up the question that this gentleman asked me before. Naturally, I would think that this is an approved brand of the Red Cross or the kind that the Red Cross uses.

469

Q. You mean if you take it without reading anything but the mark—— A. That is right, yes.

Q. —you would assume in your mind that there is some—— A. Connection somewheres.

Q. —some connection in that the Red Cross actually used that type of material? A. Yes.

Trial Examiner Furnas: Anything further?

Mr. Morgan: That is all.

Trial Examiner Furnas: You are excused.

(Witness excused.)

470

Trial Examiner Furnas: We will have a five minutes' recess.

(There was a short recess taken.)

WILLIAM E. LUSK was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Trial Examiner Furnas: Proceed, gentlemen.

Direct Examination by Mr. Morgan:

471

Q. You are Mr. William E. Lusk? A. Yes, sir.

Q. And what is your business or occupation—here in Baltimore? A. Yes; grocery.

Q. Sir? A: Grocery business.

Trial Examiner Furnas: I didn't get that. What is the witness'——

The Witness: Grocer.

By Mr. Morgan:

Q. Are you with some store? A. I am the owner.

Q. Of what? A. The New Edgewood Market.

472 *William E. Lusk—For the Commission—Direct*

Q. Where is that located, sir? A. 3301 Edgewood Street.

Q. Here in Baltimore? A. In Baltimore.

Q. Mr. Lusk, do you know what the Red Cross is? A. Yes, sir.

Q. The American Red Cross? A. Yes, sir.

Q. What does it mean or typify to you? Just in your own way, just tell us. A. Well, it is an organization to help people in need.

Q. Do you know whether the Red Cross to which you refer has an emblem or sign it is known by? A. Yes, I do.

Q. What is that? A. The Red Cross.

473 Q. Any words go with that emblem? A. Not as I know of.

Q. No words.

I will get you to look at this exhibit here. We call it Commission's Exhibit 10 in this matter, look at the markings on it, the emblems, the signs, anything but written portions; look it over carefully in your own way and tell the Commission there what it indicates it is to you.

Is it—— A. This indicates it is Red Cross; that is all I can say.

Mr. Sykes: I think the witness gets the wrong impression.

474 Trial Examiner Furnas: Let us get the witness' answer and then there may be something that you want to straighten out on cross examination. I didn't get it.

Read the question to the witness now.

Mr. Sykes: The question is indefinite.

Mr. Morgan: He thought I was referring to——

Trial Examiner Furnas: Well, read the question.

(Last question and answer read by Reporter.)

Trial Examiner Furnas: You understood the question; did you?

The Witness: Yes, sir.

Trial Examiner Furnas: All right.

Mr. Morgan: That is his answer.

Trial Examiner Furnas: Yes.

By Mr. Morgan:

Q. Mr. Lusk, I will get you to tell His Honor further whether or not to you the labeling or wording on that exhibit indicates that the Red Cross may have something to do with it? A. Not a thing.

Q. Not a thing. Does it indicate that the Red Cross may 476
have any connection with that exhibit? A. No. I have been selling them two or three years and I didn't think that.

Q. You sell them? A. Yes.

Q. You say you have been selling those two or three years? A. Yes, sir.

Q. That is, the towel? A. Yes, sir; the towel.

Q. Have you sold any Red Cross tissue? A. Yes, sir; I have.

Q. Sold both the last two or three years? A. Yes, sir.

Q. Have you sold these products over the counter? A. Yes, sir; direct to the customer.

Q. To customers from day to day throughout that period 477
of 2 or 3 years? A. Yes, sir.

Q. Have you had occasion frequently to discuss with customers the qualities of a product like that or a similar product, prices, brands, matters like that? A. No, I never have. I have used them myself and always recommended them because I know they are good.

Q. Do you feel from your long contacts with the—sales contacts with the public over that period you would know the reaction of the public to that marking or brand on that package? A. Well, they just ask for Red Cross.

Q. What? A. They just ask for Red Cross towels or——

Mr. Morgan: That is all.

Trial Examiner Furnas: Cross examine.

Cross Examination by Mr. Sykes:

Q. When you say that it indicates the Red Cross, all you meant was that it indicated that little mark that you see there? A. That is all, yes; this.

Q. You didn't mean that it indicated the American Red Cross Society; did you? A. No; no one ever asked for——

Q. Yes. You never associated that with the American
479 Red Cross Society in all the purchasing you have done? A. No, sir; I never have.

Q. You never thought it was manufactured by the American Red Cross? A. No, sir.

Q. You never thought the Society was financially interested in it? A. Never did.

Q. No Or had any connection with it whatsoever? A. No, sir.

Q. You never represented to anybody that the American Red Cross Society, the charitable society, had anything to do with the manufacture or use of those towels? A. No. A few people have asked me about it. I told them, "No, there was no connection whatever."

480

Trial Examiner Furnas: Anything further.

Redirect Examination by Mr. Morgan:

Q. I just wanted to say, people have asked you whether it is or not? A. Several customers have asked me whether it is connected with the Red Cross.

Q. And they asked you that after noting the marking on it, after noting the cross on it? A. They asked whether the cross is connected with it.

Q. You say several of them have asked you whether it was connected with the Red Cross? A. Yes.

Q. And after they have asked you that you explained to them that it was not? A. Yes. 481

Mr. Morgan: That is all.

Recross Examination by Mr. Sykes:

Q. I suppose you have sold many packages of those towels; haven't you—— A. Yes, I have.

Q. —to a great many people? A. Yes, I have.

Q. And you say there were several people asked you. How many would you say asked you? A. Two that I know. 482

Q. What? A. Two that I know.

Q. What did they ask you? A. They asked me if it was connected with any hospital or Red Cross.

Trial Examiner Furnas: Anything further, counsel?

Mr. Sykes: No, sir; nothing further.

Mr. Morgan: That is all.

Trial Examiner Furnas: You are excused.

(Witness excused.)

Trial Examiner Furnas: Call your next witness.

Mr. Morgan: Miss McElroy. 483

Trial Examiner Furnas: What is the name, please?

Mr. Morgan: Miss Addie McElroy. Is that right?

Miss McElroy: That is right.

MISS ADDIE MCELROY was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Morgan:

Q. Miss McElroy, are you employed? A. I am.

484 *Miss Addie McElroy—For the Commission—Direct*

Q. And what is your business connection, please, ma'am? A. I am a sales lady.

Q. Ma'am? A. I am a sales lady.

Q. With whom? A. With the Service Stores Corporation at Sparrow's Point, Md., Bethlehem Steel Company.

Mr. Morgan: Did you get that?

Mr. Sykes: What is the address?

The Witness: Sparrow's Point, Md.

Mr. Morgan: Sparrow's Point.

Mr. Sykes: Sparrow's Point.

485 Trial Examiner Furnas: How far is that from——

Mr. Morgan: Fifteen miles, she said.

Trial Examiner Furnas: Fifteen miles.

By Mr. Morgan:

Q. Miss McElroy, you know of the Red Cross, do you—— A. Yes, sir.

Q. —Red Cross Society? Just in your own way, what does that mean to you, the Red Cross? A. Well, I think the Red Cross should mean to all of us that it is a service of the country for the people.

Q. Yes, ma'am. Do you know whether the Red Cross has an emblem or not, a sign? A. It has.

486 Q. What is that? A. It is a red cross. It is a cross and it is red.

Q. Any words with it? Words with it? A. I believe there is, but I just don't know what they are.

Q. I see. A. Red Cross is the only thing I know that is connected——

Q. Yes, ma'am. A. —with it.

Q. I show you here Commission's Exhibit No. 8. I will get you to look at that and examine it in your own way, the language and marks on it except the pen writing. Don't notice any writing on it.

(Witness examines exhibit.)

Q. Tell His Honor what you understand that to be.

Mr. Sykes: If the Court please, she is examining all the writings.

Trial Examiner Furnas: Give the witness plenty of time to do that.

Mr. Sykes: She is examining the writing.

Mr. Morgan: I asked her not to examine the writing.

Trial Examiner Furnas: He asked her not to.

A. Do you mean do I notice the wrapper? 488

By Mr. Morgan:

Q. Well, what is it? What do you think it is, that exhibit? What does it mean to you? What does it appear to be to you? A. Well, that just means a toilet tissue.

Q. Ma'am. A. A toilet tissue, I should say.

Q. From your examination of that exhibit, state whether or not it would indicate to you it had any connection with the Red Cross? A. Nothing but the emblem; that is the only thing.

Q. The emblem? A. The emblem is the only thing I should see. 489

Q. The emblem would suggest a connection with the Red Cross?

Mr. Sykes: Well, now, if the Court please, that is entirely immaterial. She has stated it meant——

Trial Examiner Furnas: She has stated what it meant.

Mr. Morgan: She stated what the emblem meant.

Mr. Sykes: Now he is putting words in her mouth.

Mr. Morgan: I will withdraw that question.

Trial Examiner Furnas: Question withdrawn.

By Mr. Morgan:

Q. State whether or not in your view that the labeling or marking on that exhibit would indicate approval of it by the Red Cross in connection with its use? A. To most people I think it would.

490

Mr. Sykes: Now, I move to strike out "most people."

Trial Examiner Furnas: Yes.

By Mr. Morgan:

491

Q. How about yourself? Would that be true as to yourself? A. If I didn't know what it was, me handling it—I naturally know what a package of tissue paper is.

Q. State whether or not that labeling and marking on there would indicate to you that it was manufactured in accordance with the Red Cross? A. I think if I were a customer I think that it would put that in my mind that it had some connection.

Mr. Sykes: I move to strike out what a customer thinks.

Trial Examiner Furnas: Yes; just——

Mr. Morgan: Just a moment. Wait a minute.

492

Trial Examiner Furnas: All right.

Mr. Sykes: Is that stricken out?

Trial Examiner Furnas: Just a minute. I haven't ordered it done yet.

Mr. Morgan: I am going to reframe this question, then.

Trial Examiner Furnas: All right. Withdraw your question.

Mr. Morgan: I will withdraw that last question.

Trial Examiner Furnas: Question withdrawn.

Mr. Sykes: The answer is stricken out?

Trial Examiner Furnas: Well, the question is withdrawn. There is no answer to it.

Mr. Morgan: No answer to it. I will withdraw that.

By Mr. Morgan:

Q. Miss McElroy, how long have you been selling the product? Do you sell Red Cross products? A. I sold Red Cross towels.

Q. Towels? A. Yes.

Q. How long have you been selling that? A. I should say for about four years.

Q. Four years. During that four years in which you have 494
sold Red Cross towels—that is over the counter? A. Yes, sir.

Q. —to the consuming public? A. Yes, sir.

Q. People that come into the store? A. Yes, sir.

Q. During that time have you had occasion frequently to converse with the customers about Red Cross towel products, price of the product, quality of it? A. I have.

Q. Is that from day to day, those associations with the public? A. Yes, sir.

Q. You feel from your long contacts with the consuming public over a period of four years, your conversations with them regarding this product, that you are able to state what their view is regarding the product, what it is? 495

Mr. Sykes: Object to that. This witness cannot establish her competency to testify to that.

Trial Examiner Furnas: No.

Mr. Morgan: Your Honor, I think I have qualified the witness.

Trial Examiner Furnas: Only one talk at a time. Just be seated. What is it you have got to say?

Mr. Sykes: This lady as a witness cannot demonstrate competence by any such testimony.

Trial Examiner Furnas: Now, what have you got to say?

Mr. Morgan: I think I have fully qualified the witness to answer that question by reason of her long experience in selling to the public and her conversations with them. She says it has gone on from day to day for a period of four years, and I think that——

Trial Examiner Furnas: The Examiner understands that this witness has been in daily contact with the public selling this product to them, and you are simply asking her what the reaction of the public is as she has gained it.

Mr. Morgan: That is right.

497 Trial Examiner Furnas: Objection overruled. Exception granted. The witness may answer the question.

By Mr. Morgan:

Q. Go ahead.

Mr. Sykes: I think the witness should be instructed not as to what she thought was in the minds of the——

Trial Examiner Furnas: Well, we will see what the witness says before we anticipate her answer.

498

By Mr. Morgan:

Q. Answer it in your own way.

Trial Examiner Furnas: Do you understand the question?

The Witness: I would like it stated again, please.

Trial Examiner Furnas: Read the question to the witness.

Mr. Morgan: Read it slowly now, Mr. Reporter.

(Question read by Reporter.)

A. My customers have been very well satisfied with the Red Cross towels and they do ask for them occasionally. I sell them more than one kind of paper towels, and I have had them ask for the Red Cross towels.

By Mr. Morgan:

Q. In connection with your conversations, have you or have you not gained the impression that the public regards that as approved or sponsored by the Red Cross?

Mr. Sykes: Same objection to the question. 500

Q. Endorsed by it?

Trial Examiner Furnas: Same ruling. Exception granted.

Q. Or endorsed by the Red Cross?

Mr. Sykes: Also because it is hearsay.

Mr. Morgan: That is not hearsay.

Trial Examiner Furnas: Well, not at all. This witness is in contact with these people.

Proceed.

The Witness: Would you repeat the question? 501

Trial Examiner Furnas: Read the question.

Mr. Morgan: Read the question again, please.

Trial Examiner Furnas: Yes.

(Question read by Reporter.)

A. I wouldn't say——

Mr. Sykes: Now, if Your Honor please, that is involving a conclusion.

Trial Examiner Furnas: Let the witness answer the question.

A. I have never had anyone directly connect this with the Red Cross. It is approved by the Good Housekeeping Magazine and advertised through the Good Housekeeping Magazine, and it is the quality of the paper that seems to——

By Mr. Morgan:

Q. Well, tell us this, then, just in your own way: From these contacts and conversations, are you able to say what your customers think about that product?

503 Mr. Sykes: Now, I object to that. He is calling on this witness for the mental views of somebody who never spoke a word about it.

Trial Examiner Furnas: No. He is asking this witness what impression she has gained from her conversations with customers in selling them the product that she now holds in her hand; is that right?

Mr. Morgan: Yes.

Trial Examiner Furnas: The witness may answer the question.

Mr. Sykes: Just one more statement, if the Court please. If you turn back to a question or two further back——

504 Trial Examiner Furnas: Yes.

Mr. Sykes: —she was asked a question and she said nobody had spoken to her about it.

Trial Examiner Furnas: That is all right.

Mr. Sykes: Now, if it doesn't come by word of mouth it is just a mere impression of this witness, a mental impression as to somebody else's mental operation.

Mr. Morgan: If the Court please, I just want to say this word: I have qualified this witness as an expert in that relation by reason of that experience.

Trial Examiner Furnas: I accept her as an expert.

Mr. Morgan: It is a well known procedure.

Trial Examiner Furnas: Objection overruled. Exception. It is an established rule in the Commission's procedure to take that kind of testimony.

Mr. Morgan: Always.

Trial Examiner Furnas: Proceed.

Do you understand the question, Miss Witness?

Read the question to the witness.

(Question read by Reporter.)

506

A. When they ask for Red Cross paper towels they seem to know exactly what they are asking for, and they like the product very much.

Mr. Morgan: That is all.

Trial Examiner Furnas: Cross examine.

Mr. Sykes: No cross examination.

Trial Examiner Furnas: You are excused.

Mr. Morgan: Thank you.

(Witness excused.)

Trial Examiner Furnas: We will have a short recess while the witness is signing the voucher. 507

(There was a short recess taken.)

Trial Examiner Furnas: All right, Mr. Reporter. On the record.

Call your next witness.

Mr. Morgan: Mrs. Pindell.

Trial Examiner Furnas: Are you ready for your witness to be sworn?

Mr. Morgan: Yes, Your Honor.

508 *Mrs. A. Y. Pindell—For the Commission—Direct*

MRS. A. Y. PINDELL was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Morgan:

Q. Mrs. Pindell, where do you live? A. Cockeysville.

Q. Cockeysville. Is that Maryland?

Mr. Sykes: What is it, Coffeyville?

Mr. Morgan: Cockeysville.

Trial Examiner Furnas: How far is that?

509 Mr. Morgan: Twenty-six miles, I think she said—28 miles.

Trial Examiner Furnas: One way?

Mr. Morgan: One way.

The Witness: No; it is 14 miles.

Mr. Morgan: Oh, I am sorry. I thought you said——

By Mr. Morgan:

Q. And are you a housewife, keep house? A. Yes.

Q. Mrs. Pindell, are you familiar with the Red Cross? A. You mean the Red Cross?

510 Q. Yes, ma'am. A. I have worked with them occasionally when I have had time.

Q. The Red Cross Society? A. Yes, when I have time.

Q. Just in your own way, what does it mean to you? What is the Red Cross? A. It is a helping hand. That is about the best I can say.

Q. Yes, ma'am. Do you know whether there is a Red Cross—this helping hand has an emblem or sign it goes by? A. It has a Red Cross.

Q. A red cross. I show you an exhibit here, Commission's Exhibit 10, and get you to look at that, the labeling on it, and marks except writing—disregard any writing on it?

(Witness examines exhibit.)

Mr. Sykes: I think the witness is not examining the entire——

The Witness: What did you say?

Mr. Sykes: She is not examining the entire thing.

The Witness: Oh, you want——

Mr. Sykes: ——the writing on the back of it, if you please.

Mr. Morgan: I told her not to look at the writing.

Trial Examiner Furnas: The writing——

Mr. Morgan: Just the printing.

Mr. Sykes: Printing, yes. 512

Trial Examiner Furnas: Turn it over so you can see what it is. All right. Proceed.

By Mr. Morgan:

Q. Mrs. Pindell, I will get you to, after having examined that exhibit, tell us what it means to you, it indicates it is to you. A. So far as I can see it, it is all right.

Q. Ma'am? A. So far as I can see it is all right to me in looking at it, if that is what you mean.

Q. Well, tell us this: From the marking, labeling, on that exhibit, tell us whether or not it indicates to you the Red 513
Cross may have something to do with it?

Mr. Sykes: I object to it as leading, if the Court please.

Trial Examiner Furnas: What?

Mr. Sykes: I object to this as leading.

Trial Examiner Furnas: Objection overruled. Exception granted.

The witness may answer the question.

A. Whether the Red Cross has anything to do with it?

514 *Mrs. A. Y. Pindell—For the Commission—Cross*

By Mr. Morgan:

Q. Yes.

Mr. Sykes: Red Cross Society.
Mr. Morgan: Red Cross Society, yes.

A. Well, I wouldn't know. It has a Red Cross on it. That is all that I can see. I wouldn't know whether the Red Cross had anything to do with it or not.

Q. You wouldn't know one way or the other? A. No.

515 Q. I see.

Tell us this: State whether or not, from looking at that exhibit, you would conclude that the Red Cross has approved or endorsed that product? A. I would as long as it has the Red Cross on it.

Mr. Morgan: Yes, ma'am. That is all.
Trial Examiner Furnas: Cross examine.

Cross Examination by Mr. Sykes:

Q. Madam, have you used these towels? A. Not often.

Q. You have used them? A. Yes.

Q. Have you used the toilet paper? A. No.

516 Q. I suppose you are familiar with the marks on the front of this exhibit, "A. P. W. Paper Company, Copyright"? A. No, I wouldn't be familiar because when I open one I tear it open and don't even look.

Q. You mean you don't examine it at all? A. No, I don't examine it.

Q. You read this large— A. I just see the Red Cross and that would end it.

Q. The Red Cross, and you read the word "towels"?' A. Yes.

Q. "Trademark Registered U. S. Patent Office"? A. I didn't notice that.

517

Q. You think the Red Cross manufactured these towels? A. I wouldn't—couldn't say. I wouldn't know. All I know is Red Cross.

Q. On what do you base your statement that you would think that these towels were approved and—what is the word?—endorsed by the American Red Cross Society? A. Well, that is hard for me to say. As I say, when I open those things I never pay any attention to what they are. I unwrap them and put them up where they belong and I wouldn't know the difference between a Red Cross one, if it isn't a Red Cross one, and that.

518

Q. You know that the Red Cross Society doesn't endorse or approve any articles manufactured for sale to the public; don't you? A. They approve of any?

Q. You know they don't endorse or approve of anything? A. No, I don't know.

Q. That isn't their job?

Mr. Morgan: Wait. Wait.

Trial Examiner Furnas: Let the witness answer the question. Don't interrupt the witness while she is talking.

Mr. Morgan: I am trying to get her answer.

Trial Examiner Furnas: I understood the witness to say that she did not know whether they did or not; is that correct?

519

Mr. Morgan: That is what I understood her to say.

The Witness: I understood him to say——

Mr. Sykes: Just a minute. Read the answer.

Trial Examiner Furnas: Go ahead.

The Witness: I understood him to say that they approved of all, but I didn't think they approved of anything, but I don't think he said that.

Mr. Sykes: Will you read the answer of the witness to my question? I think the Examiner got it just wrong.

Trial Examiner Furnas: Probably I did.

(Answer read.)

520 Trial Examiner Furnas: That is what I understood her to say, that she didn't know.

Mr. Morgan: That is what she said.

By Mr. Sykes:

Q. You had finished your answer, then, hadn't you? Do you want to say anything else than that you don't know? A. I don't know about those things. I hadn't given it a thought.

Mr. Sykes: I don't know what all this rush is about. Somebody rises when the witness has already
521 answered.

Trial Examiner Furnas: I don't know what you are driving at.

Are you through with the cross examination?

Mr. Sykes: No.

Trial Examiner Furnas: Well, proceed.

By Mr. Sykes:

Q. Now, Madam, before you came on the witness stand were you asked to express an opinion as to whether you thought the Red Cross Society had endorsed this particular product? A. Before I came in here?

522 Q. Yes. A. Nobody approached me in any way.

Trial Examiner Furnas: What was the answer? I didn't get that.

The Witness: I was not approached.

By Mr. Sykes:

Q. Now, Madam, what is there about this paper that induced you to make the answer to the counsel for the Federal Trade Commission that it impressed you as showing an endorsement of this paper towel by the American Red Cross Society? A. I don't understand what you mean—when did I make—you mean here?

Q. If you did so testify, do you want to change your testimony?

Trial Examiner Furnas: The witness has stated she doesn't understand your question.

Read the question to the witness.

The Witness: I thought he was asking me a new question. I understood the other one.

Trial Examiner Furnas: Well, do you want the question read to the witness?

Mr. Sykes: No; we will strike it all out.

Trial Examiner Furnas: From what? What do 524
you want stricken?

Mr. Sykes: Read it to me.

(Record read as follows by the Reporter:

"Q. Now, Madam, what is there about this paper that induced you to make the answer to the counsel for the Federal Trade Commission that it impressed you as showing an endorsement of this paper towel by the American Red Cross Society?")

Mr. Sykes: Strike everything after that.

Trial Examiner Furnas: Are you willing?

Mr. Morgan: Yes. It is all right with me.

Trial Examiner Furnas: Strike it, Mr. Reporter. 525

By Mr. Sykes:

Q. Madam, we want to understand each other. We will proceed as slowly as we can.

Did you intend for us to understand that it is in your mind on the witness stand here today that there is anything on that paper which is shown you, Exhibit 11, which would show that the American Red Cross Society gave its approval or endorsement to this product? A. I don't see anything that would cause it to approve or disapprove, so far as that is concerned.

526 Q. Yes. I am asking you for your mental operations, madam. Is there anything on that paper—please read it over—which would cause you to believe that that charitable society was endorsing a product of that nature? A. Well, the only thing, it has the Red Cross, as I said before. That is the only thing that I know. I couldn't see anything else, only the Red Cross.

Q. You do see the word "Trademark," don't you? A. Yes, and I see "Approved by the Good Housekeeping".

Q. And you do observe that this is a trademark—— A. Yes.

527 Q. —of an A. P. W. Paper Company? A. Yes.

Q. Yes. And you never had seen those things, examined those, until you came to this—— A. No.

Q. —witness stand this afternoon? Yes. And they were shown you at that time and you did see them at that time? A. I see them at this time.

Q. And you recognize that the A. P. W. Paper Company has got a trademark which has been registered with the United States Patent Office, a trademark for this red cross, don't you? A. Yes.

Q. You recognize that? A. I see that, yes.

Q. What? A. I see it but that is all I know.

528 Q. Yes. Yes. Now, I ask you once more: Is there anything on that paper which would induce you, does induce you now, to say that the American Red Cross Society is endorsing and approving this particular product? A. Well, I don't see any "American Red Cross." All I see is just the plain red cross.

Q. That is the only thing you see? A. Yes.

Q. And that doesn't cause you to think that there is anything on that paper which would mean that the American Red Cross Society is endorsing a product manufactured under that trademark; is there? A. No, I wouldn't——

Mr. Sykes: All right.

Mr. Morgan: Just one question. I just want to ask one question and let you go.

Redirect Examination by Mr. Morgan:

Q. Take yourself as a housewife, and suppose you went into a store to buy that product, saw it on a shelf and were far enough away to see the large labeling, the red cross; would you take it down and read all the little print on it before you bought it?

Mr. Sykes: I object to that as speculative.

Trial Examiner Furnas: Objection overruled. Exception granted.

The Witness: Shall I answer?

Mr. Morgan: Yes, ma'am. 530

A. I don't think I would examine it that thoroughly.

Mr. Morgan: Yes, ma'am. That is all.

Trial Examiner Furnas: Anything further? If not, you are excused.

Mr. Sykes: I just had one question to ask this witness, if you please? May I?

Trial Examiner Furnas: Certainly.

Mr. Sykes: You need not resume the stand.

Trial Examiner Furnas: On the record.

Recross Examination by Mr. Sykes: 531

Q. How did you happen to come here today? A. I was summoned.

Mr. Morgan: She was subpoenaed.

Mr. Sykes: Subpoenaed.

The Witness: Yes, subpoenaed.

By Mr. Sykes:

Q. Before you received that subpoena had you talked with anyone? A. About this?

Q. About this matter. A. No, I didn't. I couldn't understand why I was summoned.

Trial Examiner Furnas: Here, let her step around there. The Reporter can't get this if you are going to question her.

Just be seated, please.

By Mr. Sykes:

Q. Had somebody gone out to your place there 20 miles out of Baltimore to see you about this? A. They had not.

Trial Examiner Furnas: I think the witness stated that nobody had talked to her.

533 The Witness: All I have, I received this in the mail. That is all. I put myself out to come here.

By Mr. Sykes:

Q. Running back a year or two, if you can, was there anybody that purported to represent the Federal Trade Commission asked you some questions about some of these things? A. They never came to me to ask me about anything.

Mr. Sykes: All right, then.

Trial Examiner Furnas: Anything further?

Mr. Morgan: No.

534 Trial Examiner Furnas: You are excused.

(Witness excused.)

Trial Examiner Furnas: We will have a short recess.

(There was a short recess taken.)

Trial Examiner Furnas: On the record.

What is your further pleasure, gentlemen?

Mr. Morgan: I move, Your Honor, that this hearing be adjourned to June 18th at Staunton, Va., at 10 a. m.

535

Trial Examiner Furnas: Can you give the room?

Mr. Morgan: The room is Room 203, Federal Building, Room 203.

Trial Examiner Furnas: Room 203, Federal Building?

Mr. Morgan: Federal Building, yes.

Trial Examiner Furnas: Mr. Reporter, you will note that when this hearing adjourns it will adjourn to reconvene on June 18, 1942, at Staunton, Va., in Room 203, Federal Building.

The hearing is now adjourned at 2:50 p. m. The hearing is adjourned.

536

(Whereupon, at 2:50 o'clock p. m., June 16, 1942, the hearing was adjourned.)

537

538

Transcript of Hearing, Dated June 18th, 1942, Staunton, Virginia

BEFORE THE

FEDERAL TRADE COMMISSION

Docket No. 4747

In the Matter

of

539 A. P. W. PAPER COMPANY, INC., a corporation.

Room 203, Post Office Building,
Staunton, Virginia,
June 18, 1942.

Met, pursuant to adjournment, at 10 a.m.

Before:

MILES FURNAS, Trial Examiner.

Appearances:

MARSHALL MORGAN, Esq., appearing for the Federal Trade
540 Commission.

EMERY H. SYKES, Esq. (Sullivan & Cromwell, 48 Wall Street, New York, N. Y.), appearing for the Respondent.

PROCEEDINGS

Trial Examiner Furnas: Mr. Reporter, you will note that this is a reconvening by agreement and notice of hearing in Docket No. 4747, at 10 o'clock a. m., in Room 203, Post Office Building, in the City of Staunton, Virginia, Federal Trade Commission versus A. P. W. Paper Company.

The last hearing was held in the City of Baltimore, State of Maryland, on the 16th day of June, 1942. You will note, Mr. Reporter, that counsel for the Commission and counsel for the Respondent are present.

Of course, you gentlemen understand that the same decorum will be exercised here as in the Federal Courts, and you are instructed also, Mr. Reporter, that all matters transpiring will be on the record unless otherwise ordered by the Trial Examiner. Any of you gentlemen desiring to make a statement off the record must first request permission of the Trial Examiner to do so. We will now proceed. 542

What is your further pleasure, gentlemen?

Mr. Morgan: You can swear Mrs. Cox.

MRS. STUART THOMAS COX was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Trial Examiner Furnas: Proceed.

Direct Examination by Mr. Morgan:

Q. Mrs. Cox, I believe your name is Mrs. Stuart Thomas Cox. A. Yes. 543

Q. And you live here in Staunton? A. Yes.

Q. You are a housewife, keep house? A. Yes, I do.

Q. What is your street number, your residence address? A. No. 4 Woodrow Terrace Apartments.

Q. Woodrow Terrace? A. Yes.

Q. I see. Mrs. Cox, do you know of the American Red Cross? A. Yes, sir.

Q. What is the Red Cross, just in your own language? What does it mean to you? What is it?

Mr. Sykes: If the Court please, I suppose my objections continue——

Trial Examiner Furnas: The same objection goes through all the way.

Mr. Sykes: —without further reciting them?

The Witness: Shall I go ahead now?

Mr. Morgan: Yes.

Mr. Sykes: Excuse me.

Trial Examiner Furnas: By the way, I just want to say that at the last hearing there was on both sides—I am talking to both of you gentlemen. When
545 the witness is testifying, don't interrupt the witness, and if one of you gentlemen is talking, why, I want the other to remain quiet until you finished. You will both be given plenty of opportunity to express yourselves, but when a witness is testifying or answering a question, I don't want either one of you to rise up and disturb the witness. When the witness is through, then you may make your objection and it will be ruled on. Proceed.

The Witness: May I have the question?

Mr. Morgan: Read the question to the witness, please.

546 (Question read by reporter.)

A. The American Red Cross is—to me means a national organization to help the people of America in time of need such as in war or any other time when people—poor people or people that have suffered need help.

Q. Mrs. Cox, do you know whether or not this Red Cross of which you speak possesses an emblem or has an emblem? A. Yes, sir.

Q. What is that emblem? A. It is a red cross.

Q. A red cross. Do you know whether or not any word or words are used in connection with that emblem? A. I really don't know.

Q. Mrs. Cox, I want to show you Commission's exhibit here No. 10, we call it. I will get you to look at the labeling, branding, other printed matter on that exhibit. Tell us what that appears to you to be by reason of such labeling or branding.

Mr. Sykes: I observe that the young lady is only examining one side. I think she should examine it 548
all and examine all the writing on it except the—all the printing on it.

Trial Examiner Furnas: Yes. Pay no attention to anything written in pen and ink. I think that the suggestion of counsel for the Respondent is good. Proceed.

The Witness: May I have that question again?

Trial Examiner Furnas: Read the quesiton to the witness, please.

(Question read by reporter.)

A. Well, if I understand the question correctly, you want 549
me to say what this label means to me?

Q. To you, yes; to you.

Mr. Sykes: The question should include not only the label, but the whole thing.

Trial Examiner Furnas: No; the question is as to the label. You can ask other questions on it, but he has only asked the question as to what that label means to the witness, and she can answer.

550 *Mrs. Stuart Thomas Cox—For the Commission—Cross*

Mr. Morgan: Well, of course, I said the label and the branding.

Trial Examiner Furnas: Whatever the question was.

Mr. Morgan: Branding would include the printed matter, too.

Trial Examiner Furnas: That is all right. Go ahead.

551 A. Well, this means to me that it is paper towels made by the Red Cross Towel Company or the towel company that has the red cross symbol, I suppose you would call it, and from this they have their trade-mark, which is the red cross, registered in the U. S. Patent Office. And—well, I don't know.

Q. State whether or not, Mrs. Cox, that label, red cross label, or mark, on that exhibit would indicate to you any standard set by the Red Cross. A. It seems to me that it should have some standard set by the Red Cross, since it is the same emblem.

Mr. Morgan: That is all.

Trial Examiner Furnas: Cross examine.

552

Cross Examination by Mr. Sykes:

Q. Have you seen, Madam, this red cross used on any other products? A. Well, I have never bought any of these —this stuff made by this company, so I really haven't ever paid much attention to it.

Trial Examiner Furnas: I don't believe the witness understands. If I understand the question, he wants to know if you have seen other companies

besides the one that is here using the same emblem; isn't that correct?

Mr. Sykes: Yes.

A. No, I don't believe I have.

Q. You have never had occasion to buy these red cross towels under the trade-mark of the A. P. W. Paper Company; have you? A. No, sir.

Q. Nor yet have you had occasion to buy any of this toilet tissue—showing the witness Exhibit No. 8—under that mark? A. I don't believe I have ever bought anything 554
made with the red cross emblem on it.

Q. Madam, how did you come here this morning? A. I don't understand how I came here either.

Q. You were subpoenaed, weren't you? A. Yes, sir.

Q. Did you talk with anybody before you came? A. Only with my husband, if I remember correctly. You mean this morning?

Q. No, at any time in connection with this matter in which you are testifying. A. Well, I really didn't know what it was all about, and I had never heard of the A. P. W. Paper Company before, so I just didn't understand what it was all about.

555

Q. Was this the first time, your appearance on the witness stand, when you have had occasion to consider the significance of the red cross as a trade-mark for paper towels? A. Yes; if I remember correctly—I don't remember exactly when it was, but I believe somebody came to my apartment and asked me about this. I really don't know when it was, but when I—he handed me this, I remember then that somebody had asked me about it before, had come to my apartment door and asked me about it.

Q. What did they ask you? What did they say to you? A. If I remember correctly—as I say, it has been quite a

556 while ago—I think they just asked me what this label meant to me, just like I was asked this morning.

Q. He asked you to note that it was a trade-mark of some A. P. W. Paper Company? A. I really don't remember.

Q. Their thought was just what that label there meant to you? A. I really can't remember. As I say, it has been quite a while ago.

Q. Do you use any of the products made by a company——

557 Mr. Sykes: I am going to ask a question about J. & J.

Trial Examiner Furnas: Well, just don't—now, just off the record just a minute. Do you want this on the record?

Mr. Sykes: I want it on the record.

Trial Examiner Furnas: What we are going to say now?

Mr. Sykes: Yes.

Trial Examiner Furnas: All right, proceed.

Mr. Sykes: Without using the name.

Trial Examiner Furnas: Well, that is all right,

558 but I——

Mr. Sykes: I am going to ask the question about a company which is known as J. & J. and on which the Examiner made a ruling the other day to the effect that I ought not use that name.

Trial Examiner Furnas: The ruling still stands.

Mr. Sykes: I thought possibly on further consideration the Examiner may have decided that it is quite proper for me to ask that type of question on cross examination.

Trial Examiner Furnas: I don't think so. The Examiner still rules on that as he did. I don't think it is proper. This is not a trial before a jury or anything like that, but this record is public, and I don't like to bring in any company outside of what is mentioned. If the company that you have in mind was on trial, would you want the attorneys to ask about your client?

Mr. Sykes: Of course, as a lawyer, I am not greatly interested in what the Examiner likes to do or doesn't like to do. I am only interested in what I conceive to be my rights. 560

Trial Examiner Furnas: Yes.

Mr. Sykes: And I am, of course, interested in the Examiner's views of what are my rights, not of the Examiner's own predelictions.

Trial Examiner Furnas: And the Examiner on the same line is endeavoring to rule the way he thinks it should be, and it is the way the Examiner is here to hold this hearing, and this is the Examiner's ruling.

Proceed.

Mr. Sykes: May I have an exception?

Trial Examiner Furnas: Certainly. An exception is granted to all my rulings. 561

By Mr. Sykes:

Q. You use Band-Aid? A. I don't remember.

Q. Do you know a product known as Band-Aid? A. You speaking of bandages with adhesive tape and gauze on it?

Q. Yes. A. I have used those, but I don't know whether they have been called Band-Aids or what they have been called.

562 *Mrs. Stuart Thomas Cox—For the Commission—Cross*

Q. You use bandages from time to time; do you not? A. Yes, sir.

Q. And you use adhesive tape from time to time? A. Yes, sir.

Q. Have you noted on adhesive tape that you have bought and on bandages that you have bought and on Band-Aid that you have bought, and other products which you used in connection with medication that there is a red cross of this general type appearing in this trade-mark? A. I believe I have.

Q. Did you associate that particular product with some
563 standard that is created by the American Red Cross Society? A. Well, I have never had an occasion to associate it with them.

Q. You don't think of that one as a standard which is set by the Red Cross; do you? A. Well, not particularly. I mean I have just never thought about it particularly.

Q. Well, look at this toilet tissue, Exhibit 8. Is it your present thought as you look at that and see that that is under a trade-mark, that the American Red Cross Society has set some standard for toilet tissue? A. Well, I just don't know.

Q. What is that? A. I don't know. I don't see why the
564 Red Cross would have an occasion to, but——

Q. The Red Cross is a charitable organization; isn't it? A. Yes, sir.

Q. It isn't engaged in business; is it? A. No, sir.

Q I am just trying to get the operation of your mind. What would be the occasion of the Red Cross setting a standard for a business company in connection with its sale of its own product? Can you conceive of that?

The Witness: Will you repeat that, please?

Trial Examiner Furnas: Read the question to the witness.

(Question read by reporter.)

A. Well, as you just said, the Red Cross isn't engaged in business. Naturally, it wouldn't.

Q. Upon further consideration, is it your thought that this trade-mark of the A. P. W. Paper Company represents some standard that the American Red Cross Society has set for that company to perform? A. Well, no, not speaking of it in that way, I wouldn't think so, but I think if any of 566
us see a red cross we think that that product certainly has certain standards even if they haven't been set by an organization such as the Red Cross. I mean we have—what I mean by that is that we have seen the American people have seen the American Red Cross so much that I think just seeing a red cross means quite a lot to us.

Q. They associate with the red cross the American Red Cross Society, do they, in your experience? A. Well, I don't—I guess I do in a way.

Q. Do you know of the Red Cross shoe? A. Yes, sir.

Q. Do you associate American Red Cross Society with the Red Cross shoe, young lady? A. No, I don't suppose I do.

Q. Maybe you sleep on a Red Cross mattress. Do you? 567
A. No, sir.

Q. Are you familiar with the Red Cross mattress? A. No, I don't believe I have ever heard of it.

Q. Well, if you should see a Red Cross mattress, would you associate that as a product of the American Red Cross Company? A. No, sir.

Q. This wrapper on Exhibit 10; is that——

Mr. Morgan: I think we had better first identify it.

Trial Examiner Furnas: Which is it, the title?

Mr. Morgan: That big one is 10.

Mr. Sykes: Exhibit 10.

568 *Mrs. Stuart Thomas Cox—For the Commission—Redirect*

By Mr. Sykes:

Q. Does that convey to you, young lady, a suggestion that this product is manufactured in mills operated by the Red Cross Society? A. No, sir.

Q. Or, that the American Red Cross Society is financially interested in or affiliated with and receives—no; strike that out.

Trial Examiner Furnas: Strike that.

Q. —or that the A. P. W. Paper Company is financially
569 connected or affiliated with or receives financial support from the American Red Cross Society? A. No, sir.

Q. That strikes you as a little fantastic; doesn't it? A. Yes, sir.

Q. That the A. P. W. Paper Company's products are endorsed, approved or sponsored by the American Red Cross Society? A. No, sir.

Q. These products—this toilet tissue is put on the market with the approval of the American Red Cross Society? A. No, sir.

Mr. Sykes: That is all. Thank you.

Trial Examiner Furnas: Anything further?

570 Mr. Morgan: Just one or two short questions.

Redirect Examination by Mr. Morgan:

Q. Mrs. Cox, Mr. Sykes, the attorney for the Respondent in this matter, has directed your attention to the trade-mark, the company trade-mark, there, on these exhibits, Exhibits 8 and Exhibit 10. I will ask you whether or not, in your view, the A. P. W. Paper Company would or could use the red cross emblem without the permission of the Red Cross?

Mr. Sykes: Well, I object to that as wholly immaterial.

Trial Examiner Furnas: I don't get the question. Just read the question, will you, again?

(Question read by reporter.)

Mr. Sykes: If your Honor please, he is asking a legal question, asking this witness to pass on what her views are as to the legal rights of this company. Of course, the legal rights are fixed by law, by Commission statute.

Mr. Morgan: No, the company——

Trial Examiner Furnas: Don't interrupt while one is speaking. 572

Mr. Sykes: And it is vitally material what this young lady thinks about what Congress has done in the past.

Trial Examiner Furnas: Well, I don't——

Mr. Morgan: I except to that statement about Congress.

Trial Examiner Furnas: Yes; there is no use bringing Congress in. Congress has got nothing to do with it. This is simply a hearing of the Federal Trade Commission.

Mr. Sykes: If the Court please, may I suggest that by congressional Acts of 1905 and 1910, which are pleaded in the complaint, any corporation which did business before 1905 used the trade-mark. 573

Trial Examiner Furnas: Well, that is off the record if you are going to talk on that, because it is——

Mr. Sykes: Discussion——

Trial Examiner Furnas: Just a minute. Just a minute. We can settle all this right now and once and for all. You have read the Rules of Practice?

Mr. Sykes: I have, yes, sir.

Trial Examiner Furnas: All right, sir, you know it states plainly in here that any objections to be made

574 *Mrs. Stuart Thomas Cox—For the Commission—Redirect*

by any counsel be made in very brief form and any argument on that be made off the record. Do you remember that?

Mr. Sykes: I forgot that, sir.

Trial Examiner Furnas: Then I will read it to you.

Mr. Sykes: Then I would suggest that this argument go off the record. You see, I am quite ignorant.

Trial Examiner Furnas: No, you are not ignorant. This is off the record.

575 (Discussion off the record.)

Trial Examiner Furnas: All right, gentlemen. Let us proceed.

By Mr. Morgan:

Q. Mrs. Cox, you were asked by Counsel for the Respondent in this matter about your having been interviewed some time ago by some one in regard to these products, some question or questions having been asked you. If you answered any question at that time, you said just what you thought; did you not? A. Yes, sir.

576 Q. And the questions that I have asked here today, you have said in answer to them just what you thought and have tried to tell the truth? A. Yes, sir.

Mr. Morgan: That is all.

Trial Examiner Furnas: You are excused. Thank you very much, Mrs. Cox, for coming in.

(Witness excused.)

Trial Examiner Furnas: Call your next witness.

Mr. Morgan: Mrs. Waite, Herbert Waite.

MRS. HERBERT WAITE was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Morgan:

Q. Mrs. Herbert Waite, is it not? A. Yes, sir. What have I done?

Trial Examiner Furnas: Now, just wait a minute. Off the record.

(Discussion off the record.) 578

Trial Examiner Furnas: Let us proceed.

By Mr. Morgan:

Q. You live here in Staunton, Mrs. Waite? A. Yes, I live at 118 North Coalter. It is the old Catholic House.

Q. Yes, ma'am. And you are a housewife here? A. Uh-huh.

Q. Mrs. Waite, do you know of the Red Cross? A. I know very little about it.

Q. I said, do you know of it, what it is? A. Oh, yes, indeed.

Q. Just in a few words, in your own language, what is 579
the Red Cross? What do you know it to be? A. Well, it seems to be the——they come to the assistance of people in time of trouble, peril. That is the only thing I have ever thought about the Red Cross.

Q. This Red Cross that you say comes to the assistance of people in time of trouble, does it have any kind of a symbol or emblem it is known by? A. I wouldn't know.

Q. A sign, a symbol or emblem? A. It has a red cross emblem.

Q. Ma'am? A. It has a red cross.

Q. Yes, ma'am. I am going to show you what we call Commission's Exhibit 10, Mrs. Waite, and get you to look

580 at this, look at the printing on it, all over it, all around it ——ignore writing——and any labelling or marking on it, and tell us what that labeling or marking indicates or means to you, if anything.

Mr. Sykes: I think the witness should read it all. She has not read it all. Take whatever time you need.

Trial Examiner Furnas: Yes, take your time.

A. Yes, but I don't think—it never has signified anything much to me, except what I said, coming to the assistance of
581 people when they need—they needed help.

Q. You mean this sign that you see on there means that to you? A. Yes; the Red Cross means that to me.

Q. That would be the thing coming to your mind, would it, when you look at that? A. Yes. Should I think of something else? I mean should I——

Trial Examiner Furnas: No. No. That is all right.

Mr. Sykes: I did not quite get what the witness said.

Trial Examiner Furnas: Read the answer.

582 (Previous record read by reporter.)

Trial Examiner Furnas: Anything further?

Mr. Morgan: That is all.

Trial Examiner Furnas: You may cross examine.

Cross Examination by Mr. Sykes:

Q. The Red Cross—— A. Does it signify something?

Q. The red cross symbol which appears as a trade-mark on this Exhibit 10, you associate that with the Red Cross, do I understand? A. Yes; and it seems to me the red cross is a symbol of mercy; isn't it?

Q. Yes. Now, when you see it on this Exhibit No. 10, which consists of kitchen, bath, nursery, garage paper towels under a trade-mark — A. It doesn't seem right to me.

Mr. Morgan: Wait and get her answer.

Mr. Sykes: I move to strike "It doesn't seem right".

Trial Examiner Furnas: Yes, that may be stricken.

By Mr. Sykes:

Q. Does that convey to you, Madam, the idea that the 584
American Red Cross is manufacturing paper towels? A. Huh-uh.

Q. No; nothing at all. You know that the American Red Cross is not engaged in the manufacturing business; don't you? A. Yes.

Q. It is a charitable institution? A. Uh-huh.

Q. And so all you meant when you testified that you thought of the Red Cross when you saw this was that when you see the symbol it reminds you of the Red Cross; is that right. A. (The witness nodded her head.)

Q. And if you should see it on anything whatsoever, you would think of the Red Cross in connection with it? A. Yes, 585
but I think it should be put on things that signify Red Cross; not toilet paper and things like that. I don't like that.

Q. You think it is a bit undignified to put it on toilet paper? A. Yes, I do.

Q. That is the only objection that you have? A. Yes.

Q. Yes. And if Congress has authorized its being put on toilet paper——

Mr. Morgan: Now, I object, if your Honor please.

Trial Examiner Furnas: Yes.

Mr. Morgan: The witness hasn't any——

Trial Examiner Furnas: I don't know. Wait a minute. Let us see what the question is going to be before you object to it.

Mr. Sykes: Well, I will withdraw it.

Mr. Morgan: We have an idea what it is going to be.

Mr. Sykes: There is an objection and ruling before I ask the question.

Mr. Morgan: You have had enough.

By Mr. Sykes:

587 Q. Now, this red cross sign, Madam, is used on other articles throughout the country; isn't it? A. I don't remember. I expect it is.

Q. Do you know of the Red Cross shoe? You have seen that advertised in a magazine? A. Uh-huh. I had forgotten that.

Q. Maybe you use Band-Aid. A. No, but I always read about it in the paper, they have it advertised so much.

Q. Maybe you use some cotton to put on sores. A. Yes, absorbent cotton.

Q. Absorbent cotton of some kind? A. Uh-huh.

Q. And isn't that sold under a mark of the red cross? A.
588 I am trying to think. I don't remember. I know it comes in a blue box, but I don't remember about that stuff.

Q. Who manufactures the absorbent cotton you do use? A. Oh, dear, I don't remember. I am awful dumb. I am sorry.

Q. You forgot? A. Forgot.

Q. Don't you recall there is a red cross used on that? A. No; I can't think of anything but the blue box it is in.

Q. Have you ever purchased any of these red cross towels sold under this trade-mark—— A. No, I——

Q. —made by the A. P. W. Paper Company of Albany, New York, at any time? A. No.

Q. Has anybody ever requested you to purchase any of those articles? A. Huh-uh.

Q. Or this toilet tissue, Exhibit 8, have you ever purchased such an article? A. No, sir.

Q. Have you ever been approached to buy any such article? A. (The witness shook her head.)

Q. Before you came here today had you ever heard of the A. P. W. Paper Company Red Cross Toilet Tissue? A. No, I hadn't.

Q. Never had heard of it? A. No.

Q. And had you ever heard of the A. P. W. Paper Company Red Cross Towels sold under the trade-mark "Registered United States Patent Office"? A. Huh-uh.

590 Q. The first time you ever heard of this product you heard today when you were on the witness stand? A. Yes.

Q. Didn't somebody show you the label at some time or other before you came here? A. No. I may have glanced in the store window and just seen a red cross, but didn't pay any attention to it.

Q. You don't remember that? A. No.

Q. You say you may have. You mean that you have or you have not? A. No, I don't, but it seems that if a person is walking up and down a street, passing a store window, they might pass by and take a glance at it as they pass.

591 Q. Well, we will all concede, Madam, that whatever is in the store window we are apt to see, and if we are there we will see it. But I want to get from you some explanation——

A. Well, just what is——

Q. —as to just show how this was brought to your attention before you came in this room. A. How it was?

Q. How it was brought to your attention. A. I got a notice to come up here.

Q. Had you talked about it before you got that notice? A. No, sir. I was so dumbfounded, I was scared, and I went up to Mr. Phiffe. You know Mr. Phiffe of the Standard National Bank? But I——

Trial Examiner Furnas: Let us keep order.

The Witness; Am I——

Trial Examiner Furnas: No. Go ahead.

A. (continuing) He manages my affairs at the bank, and when Mr. Lotus came to me, he said, "You come on up."

Q. It isn't so bad, is it, Madam? A. No, but I never know what you are going to say next, ask me next, and I couldn't answer you maybe. I thought it was like—about some paper. Now, several years ago, two very pretty little girls came down
593 to my door and asked me to buy some paper made by a company here in Staunton—I forgot the name of the company—and just to be nice I got some of it, and that is the only thing—that is what I thought this was.

Q. You refer to writing paper? A. Writing paper.

Q. It had nothing to do with the A. P. W. Paper Company—— A. No.

Q. —of Albany, New York? A. No.

Mr. Sykes: Well, I think that is all, Madam.

The Witness: Is that all?

Trial Examiner Furnas: Just a minute. Are you through?

Mr. Morgan: Just one question, Mrs. Waite, and
594 I will be through. Thank you.

Trial Examiner Furnas: All right.

Redirect Examination by Mr. Morgan:

Q. This gentleman, Mr. Sykes, attorney for the Respondent in this matter——. A. I didnt know he was an attorney.

Q. —has asked you about trade-marks on this product, and so forth, A. P. W. trade-mark, and seeing a product like this in a store. If you were going to buy this product and saw it on a shelf, the red cross and Red Cross towels, you

would not take it down there and read all the little fine print on it before you bought it; would you? A. I wouldn't buy it.

Q. Well, if you were going to buy it, you wouldn't read all the little fine print before you bought it? A. No, I wouldn't.

Q. You would go by this big label, wouldn't you, and the signs? A. Yes.

Mr. Sykes: I object to this as leading, putting the words right in this witness' mouth, what she would look at. I think that is highly improper. 596

Trial Examiner Furnas: Well, I am going to let her answer. Objection overruled and exception granted.

Anything further?

Mr. Morgan: That is all.

Trial Examiner Furnas: Have you anything, Mr. Attorney for the Respondent?

Mr. Sykes: No, I haven't anything further.

Trial Examiner Furnas: All right.

(Witness excused.)

597

MRS. FRANK SHAFFER was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Morgan:

Q. Mrs. Shaffer, do you live here in Staunton? A. Yes, I do.

Q. What is your address, please, ma'am? A. 311 North New Street.

Q. Are you a housewife, Mrs. Shaffer? A. Yes, I am.

Q. Do you know of the Red Cross, Mrs. Shaffer? A. Yes, I do.

598 *Mrs. Frank Shaffer—For the Commission—Direct*

Q. What is the Red Cross as you know it? A. Well, I know it as an organization that gives aid in time of need to any one. We hear of it mostly during the war, but it is very active any time.

Q. That is right. That organization which gives good aid to which you refer, does it have a sign or emblem? A. Yes, it has a red cross.

Q. Red cross. Any word or words that go with that red cross sign? A. As far as I know, it is just the red cross.

Q. The red cross words. You mean the words "Red Cross"; is that what you mean? A. Yes.

599 Q. Mrs. Shaffer, I show you Commission's Exhibit No. 8 here and get you to look that over. Look at the labeling, any marks on it, just read what is on there very carefully——

Trial Examiner Furnas: Except the writing.

Q. —except the writing. Disregard the writing on there and read anything else.

Mr. Sykes: You mean you desire her to read all the printed matter?

Mr. Morgan: Printed matter, yes.

Trial Examiner Furnas: Yes. Yes.

600 Mr. Morgan: Disregard the writing. Printed matter, labels and marks, but disregard the writing.

Mr. Sykes: If the Examiner will excuse me, I directed my remark to counsel. I should have directed that to the Examiner.

Trial Examiner Furnas: All right. It is all right.

By Mr. Morgan:

Q. Now, Mrs. Shaffer, having examined the printed matter and labeling and marking on that exhibit, I will ask you to state just in your own way what, if anything, that printed matter and marking and labeling means to you. A. Well, it

seems as though the United States Government has given a patent to this company to use the red cross probably, and there are many uses of the products of this company, of the products that they put out.

Mr. Morgan: I didn't quite get that. Say that again, the last part.

The Witness: Well, from reading this, there seems to be many uses of the products that the company puts out, after reading this list of—you know, the list that is put on the package or on the covering.

Mr. Sykes: You haven't got the whole thing. She said the United States had given them a patent. 602

By Mr. Morgan:

Q. You say "them". Whom do you mean by "them"? You refer to "them", give "them" a patent. Whom do you mean? A. The company.

Q. The company that is mentioned on that exhibit. Yes, ma'am. State whether or not, from your examination of that exhibit, you are of the opinion that that labeling or marking indicates a standard set up by the Red Cross.

Mr. Sykes: You mean the Red Cross Society——

Mr. Morgan: Society.

Mr. Sykes: —Mr. Morgan? 603

Mr. Morgan: Red Cross Society.

The Witness: Would you mind stating that again?

Trial Examiner Furnas: Read the question again to the witness, please.

(Question read by reporter.)

Mr. Sykes: If the Court please, if you are going to call for the witness' opinion on this line—what you should ask is, what impression does this make on the witness' mind. Her opinion, of course, is immaterial to all of us.

604 Mr. Morgan: Put it in there. "Impression" is a good word instead of "opinion". I like that. Thank you, Mr. Sykes.

A. When I see the red cross I always first off think of the national organization.

Mr. Sykes: I move to strike the answer out as not responsive.

Trial Examiner Furnas: Oh, I think so. Maybe not—read the question.

605 Mr. Morgan: That is entirely responsive.

Trial Examiner Furnas: Maybe I did not understand the question. As I understood the question, I think it is entirely responsive.

Mr. Morgan: Entirely so.

Trial Examiner Furnas: Read the question, please.

(Previous record read by reporter.)

Mr. Morgan: I submit that is responsive.

Trial Examiner Furnas: It seems so to me.

Mr. Sykes: We don't look at it alike; that is all.

Trial Examiner Furnas: Objection overruled.

606 Exception granted. Proceed.

By Mr. Morgan:

Q. Mrs. Shaffer, please tell us whether or not that exhibit, the marking and labeling on it, whether you have the impression that that is approved by the Red Cross.

Mr. Sykes: Impression arising from her examination of the exhibit solely? Is that the question?

Trial Examiner Furnas: No; that was not the question.

Mr. Sykes: Then I object to it.

Trial Examiner Furnas: Objection overruled, and exception granted.

Do you understand the question?

A. Well, the red cross, when I see it so boldly, seems to belong to the Red Cross organization. However, I have seen it on other products.

Mr. Morgan: That is all.

Trial Examiner Furnas: Cross examine.

Cross Examination by Mr. Sykes: 608

Q. On these other products, did you think it belonged to the Red Cross organization? A. Well, I have—I have purchased products put out by Johnson and Johnson.

Q. Yes. Did you think that that belonged to the American Red Cross Society? A. Well, frankly, I am not sure that I thought anything just at the time when I made the purchase.

Q. You didn't think at all? A. Well, I realized the red cross—any red cross product has a high standard.

Q. Now, had you ever bought these red cross—— A. No. I haven't.

Q. —tissues? The first time this particular product has 609
been brought to your attention, Madam, was this morning, is that right? A. I saw the towel covering before today.

Q. Have you purchased towels—— A. No.

Q. —of the A. P. W. Paper Company? A. No.

Q. Have you talked the matter over with others before you came in this morning? A. My husband.

Q. Well, of course—a good wife. But I mean, has any representative of the United States Government been down to see you—— A. Yes.

Q. —and asked you some questions about the use of this symbol here? A. Yes.

610 *Mrs. Frank Shaffer—For the Commission—Cross*

Q. What did he say to you or he or she or they say to you? A. Well, it has been several months ago. As nearly as I remember, he merely showed me the covering of——

Q. Covering of what? A. Of the paper towel.

Trial Examiner Furnas: The same as over there——

The Witness: Yes.

Trial Examiner Furnas: —Commission's Exhibit 10?

The Witness: Yes, it was that, kitchen towel.

611 (Counsel handing exhibit to the witness.)

The Witness: It was on a cardboard about that big (indicating). I saw the whole front.

Q. Whole front. A. Or the whole thing, probably.

Q. And what did he say? A. He asked me what it meant to me.

Q. Yes. Did he call your attention to the fact that this was a trade-mark? A. Well, frankly, I don't remember all of his questions.

Q. Did he call your attention to the fact, or do you remember whether you knew it to be a fact, that this is a pro-
612 duct of the A. P. W. Paper Company of Albany, New York? A. Well, I noticed that it was, but whether he called my attention to it or whether I read it, I am not sure.

Q. Did you know that it was a trade-mark registered at the United States Patent Office? A. Well, it says there.

Q. Yes. A. And the first time I saw it was when he showed it to me.

Q. When you examined it when this gentleman came to you and asked you questions, wasn't your attention called to the fact that this was a trade-mark? A. I am afraid if I say "yes" or "no" I probably wouldn't be telling the truth, because I don't exactly remember.

Q. That is a correct answer. If you don't remember, say you don't remember. That is a perfect answer. A. No, I don't.

Q. You have seen the red cross used on other products, haven't you? A. Yes.

Q. What products do you refer to? A. Johnson and Johnson.

Q. Yes? A. That is all that I remember.

Q. Red Cross shoes? A. I have seen those advertised.

Q. Yes. Now, Madam, you never at any time, even today, have thought that the American Red Cross Society was engaged in manufacturing; did you? A. No, I believe not. 614

Q. You didn't think that these goods—you don't think that these goods are manufactured in mills which are operated by the American Red Cross Society, do you? A. No. I may have thought that they approved any product that used the red cross, however.

Q. You mean today you may have thought so? A. Well, as I said before, the Red Cross to me, when I see it, definitely brings to mind the organization, national organization.

Q. Is that about the extent of it that you relate one to the other? A. Probably; except, as I said, it may be that the organization would approve any product that has the red cross on. 615

Q. Why would you reach that—why does your mental process reach that conclusion? A. Well, perhaps I think of the red cross as belonging to the organization.

Q. You think that the Red Cross Society approves toilet tissue of the A. P. W. Paper Company? A. Well, the Red Cross organization stands for health and sanitation and aid, and it could be.

Q. And the Red Cross shoe? A. Probably.

Q. So, anywhere that you see the red cross sign you think that it has the approval, do you say, of the American

Red Cross Society? A. Well, if I give it a lot of thought, I probably would think that, yes. I——

Q. What do you mean by "approval"? A. Well, for instance, you have heard of organizations putting their stamp of approval on certain products—projects, and I would think probably the Red Cross organization would approve this product because there is—well, sanitation in making it or the aid it would give.

Q. Approve that and not approve another product? A. Not necessarily not approve another, but definitely approve this.

617 Q. Get paid for it, you mean—— A. No.

Q. —get a commission on the product? A. No, not necessarily.

Trial Examiner Furnas: Anything further?

By Mr. Sykes:

Q. Madam, don't you appreciate that approving one product and not approving another means that in competition you are giving somebody some advantage over another product? A. I hadn't thought of it.

Q. Yes. As you think of it? A. Now?

Q. Yes.

618 Mr. Morgan: May it please the court, that is a question in economics. I hardly think this witness is qualified——

Trial Examiner Furnas: Well, I am going to allow the answer. If you made an objection, the objection is overruled. The witness must state what her opinion is, as to whether or not——

The Witness: May I have the question?

Trial Examiner Furnas: Read the question, please.

(Question read by reporter.)

A. If the ingredients in the product are superior, perhaps it deserves the approval; I don't know.

Q. Now, don't you actually know that the American Red Cross Society approves no products of any nature or description that are in commercial use? A. Actually, I hadn't thought——

Trial Examiner Furnas: I think the witness has already answered that question.

Mr. Sykes: I am asking her if she knows it.

Trial Examiner Furnas: Well, she has already testified on that. 620

Mr. Sykes: Well, I don't know it, and I would like to hear it again.

Trial Examiner Furnas: All right, then; but I just don't want to put it two or three times in the record.

The Witness: Well, I never had thought of it that way. I mean I never had until you put the question.

Mr. Sykes: That is all, I guess.

Trial Examiner Furnas: Have you anything further?

Mr. Morgan: Just one little question, Mrs. Shaffer, if you don't mind. 621

Redirect Examination by Mr. Morgan:

Q. Mr. Sykes has questioned you regarding the visit of some representative of the Federal Trade Commission to your place, your home, some time back maybe, and he has inquired of you regarding questions that this representative may have asked you. Irrespective of what may have been asked you by this representative, he didn't undertake to tell you what he wanted you to say; did he?

Mr. Sykes: Now, I think the witness should be asked what was said.

Mr. Morgan: I know, but——

Trial Examiner Furnas: Now, just one at a time now. Are you through with your question?

Mr. Morgan: Yes.

Trial Examiner Furnas: Now, have you an objection?

Mr. Sykes: My objection is that it is putting words in the witness' mouth.

623 Trial Examiner Furnas: The objection is overruled; exception granted. The witness may answer if she knows, if she remembers. Do you understand the question?

The Witness: Perhaps I had better have it again.

Trial Examiner Furnas: Read the question to the witness, please.

(Question read by reporter.)

A. No.

Mr. Morgan: That is all.

624 Trial Examiner Furnas: Anything further?

(No response.)

Trial Examiner Furnas: You are excused.

Mr. Morgan: Thank you.

(Witness excused.)

Trial Examiner Furnas: Call your next witness.

Mr. Morgan: Mrs. Cornelia Barber.

625

MRS. CORNELIA BARBER was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Morgan:

Q. You are Mrs. Cornelia Barber? A. That is right.

Q. And you live in Staunton, here? A. Yes.

Trial Examiner Furnas: Will you please speak just a little louder?

626

Q. What is your address? A. I live in the county, but I do have this address where I am working, you see.

Q. What is your Staunton address? A. 309 Vine Street.

Q. 309 Vine Street? A. That is right.

Q. Are you a housekeeper? A. No, I am not; just a maid.

Q. Mrs. Barber, do you know of the Red Cross? A. No, I do not. I know there is a Red Cross, but I don't know anything about it.

Q. You know there is a Red Cross. Do you know what that Red Cross does or what its—— A. No, I do not.

Q. I show you Commission's Exhibit No. 8, get you to read the printing, any marks or labels on that, and read all of the printing carefully. (The witness examines exhibit.) 627

Now, having examined that exhibit and read the printing on it and noted the markings, I will ask you what your impression is as to that product. A. Well—what I think about it, you mean?

Q. Yes; just what you think about it. A. I think it is a useful article for many purposes.

Q. State whether or not, in view of the marking and the labeling, printing, that you find on that exhibit, you are under the impression that the Red Cross may have had anything to do with it.

Mr. Sykes: Object to that as leading, if the Court please.

Trial Examiner Furnas: Objection overruled. Exception granted.

The Witness: Shall I answer the question?

Trial Examiner Furnas: Just answer the question.

Mr. Sykes: By "Red Cross" you refer to what? Red Cross Society, may I inquire, Mr. Examiner?

Trial Examiner Furnas: Yes.

Mr. Morgan: Red Cross Society.

629 Mr. Sykes: You mean the Red Cross Society of the United States?

Trial Examiner Furnas: Read the question to the witness again so that she may understand it, unless you want to reframe it.

Mr. Morgan: "Red Cross" in our complaint, otherwise American Red Cross, is stated to be the Red Cross in the complaint. But that is all right. I will say "the American Red Cross."

A. I don't know anything about the Red Cross.

Mr. Morgan: I don't think she quite understood—read the question very slowly to her.

630 Trial Examiner Furnas: Read the question back.

(Question read by reporter.)

Q. What is your answer?

Trial Examiner Furnas: She has not answered.

Mr. Morgan: I see.

By Mr. Morgan:

Q. Answer. A. Well, it says "United States Patent." I don't know whether Red Cross—I don't think it would have

anything to do with it. I don't think they have anything to do with it.

Q. You don't think the Red Cross has anything to do with it? A. Not with this.

Q. State whether or not, in view of the marking or labeling on that exhibit, you have the impression that it represents Red Cross standards.

Mr. Sykes: Object to that unless you define what is meant by "Red Cross standards". This witness—obviously it doesn't carry any significance to her mind.

Mr. Morgan: I asked her what her impression is.

632 Trial Examiner Furnas: The witness has stated that she doesn't know anything about the Red Cross.

Mr. Morgan: Well—

Trial Examiner Furnas: And she naturally would not know much about its standards.

Mr. Morgan: I think that is correct. That is all.

Trial Examiner Furnas: All right. Cross examine.

Cross Examination by Mr. Sykes:

Q. Madam, have you ever purchased this particular product, Exhibit 8? A. No.

Q. Have you ever purchased any products of the A. P. W. Paper Company sold under a trade-mark— A. No, I haven't. 633

Q. —"Red Cross", purchased any Red Cross towels manufactured by the A. P. W. Paper Company, Albany, New York? A. No.

Q. As a matter of fact, I don't suppose you do the purchasing in the house where you are maid; do you? A. Nothing but food.

Q. Any products or supplies for the household is purchased by the lady for whom you are working? A. That is right.

Mr. Sykes: Well, I move to strike out—no; let the testimony stand.

Trial Examiner Furnas: Does counsel for the Respondent move to strike the testimony?

Mr. Sykes: I don't think the Examiner heard me sotto voce.

Trial Examiner Furnas: All right. Is there anything further?

(No response.)

Trial Examiner Furnas: The witness is excused.

635

(Witness excused.)

Trial Examiner Furnas: Call your next witness.

Mr. Sykes: Just a moment, Mr. Examiner. Off the record.

Trial Examiner Furnas: Off the record, please.

(Discussion off the record.)

Mr. Morgan: Miss Hedrick, please.

MISS ANNA HEDRICK was thereupon called as a witness
636 for the Commission, and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Morgan:

Q. You are Miss Anna Hedrick? A. (The witness nodded her head.)

Q. Do you live here in Staunton? A. Yes.

Q. What is your address? A. 228 East Frederick Street.

Q. 228 East Frederick. Are you a housekeeper or home maker? A. I am.

Q. Yes, ma'am. Miss Hedrick, do you know of the American Red Cross? A. I do.

Q. Just in your own way and just in a few words, why, tell the Examiner what the Red Cross means to you. A. Well, it means—it stands for the highest ideals and gives aid and comfort where it is needed, both in time of peace and in war.

Q. Does this Red Cross to which you refer use a sign or symbol, an emblem? A. A red cross on a white background always.

Q. A white background. Any word or words go with that? A. Usually it is just a red cross, as well as I can—— 638

Q. You mean the words "Red Cross"? A. Yes.

Q. Yes, ma'am. Miss Hedrick, I will show you an exhibit here, Commission's Exhibit No. 8, get you to look that over carefully, all around, one side and the other, the labeling and marking on it, but don't look at any writing, and after you have looked it over I will get you to tell the Examiner what your impression is as to that product by reason of what you see on it. A. (After examining exhibit) Well, I would judge from this that it is a very good product and had the approval of the—carrying the trade-mark "Red Cross" and "Label Design Registered by the United States Patent Office," that it is O. K., carrying that approval. 639

Q. Does the labeling, wording, on that exhibit have any association to you with the Red Cross? State whether or not it does. A. No. It is the A. P. W. Paper Company. They speak of the Red Cross as an organization.

Q. State whether or not you have the impression, after having examined the exhibit, that the product has the approval or endorsement of the Red Cross.

Mr. Sykes: Object to it as leading, if the Court please.

Trial Examiner Furnas: Oh, that is all right. Objection overruled.

A. No, there is nothing on there that shows to me that it has the approval of the Red Cross, but being a good product I should think it would have the approval.

Q. You mean a good product—you should think it would have the approval of the Red Cross. When you say "would have", do you mean it does have? A. No.

Trial Examiner Furnas: No.

Q. What do you mean by that? I am trying to find out what she means. I don't understand it.

641 Trial Examiner Furnas: The witness did not say that it did have.

Mr. Morgan: No. I am trying to find out what she did say.

The Witness: Well, that is what I said.

Trial Examiner Furnas: What? Just repeat it again, will you please?

The Witness: Well, by being a good product, I should think that it would have the approval of the Red Cross Society.

Mr. Morgan: That is all.

Trial Examiner Furnas: Cross examine.

642 *Cross Examination by Mr. Sykes:*

Q. Madam, you are under the impression that the Red Cross Society approves all good products; is that it? A. I—I am.

Q. Are you under the impression that the American Red Cross Society is engaged in business? A. Well, you wouldn't call it a business, but——.

Q. You can answer the question, can't you, "yes" or "no", madam? A. No, they are not engaged in business.

Q. Are you under the impression that they sell their approval or their disapproval of products which are used

in the commercial line? A. Well, I believe they would use the best.

Trial Examiner Furnas: I don't think the witness understands your question. Read the question again to the witness.

(Question read by reporter.)

Trial Examiner Furnas: Does the Red Cross for a certain amount of money give its stamp of approval on a product? That is what——

The Witness: No.

By Mr. Sykes: 644

Q. You know that it does nothing of that sort on any product, don't you, Madam? A. Yes.

Q. You know that it would be contrary to the services of a charitable institution supported by all the people to approve a particular product of one manufacturer as against others; don't you? A. (The witness nodded her head.)

Q. What do you mean when you say, then, that you think it has the approval of the American Red Cross? You mean that the persons connected with the Red Cross think it is a nice product, something like that? A. Well, that is what I would think.

Q. You think they took a vote and voted that it was a 645 good product? A. No; they didn't have time for that.

Q. Now, just what do you mean? I want to get what you mean if I can. A. Well, I still mean what I said, that, being a good product, I believe they would—they wouldn't disapprove of it. They would——

Q. They wouldn't disapprove of it. But you mean that they take official action to approve of it? A. No.

Trial Examiner Furnas: No; the witness has already answered that. She says she didn't mean that, that they did not have time to do that.

Q. Well, you tell the Examiner what you mean when you talk about approval of something. After all, we are dealing

with something which can be explained. A. Well, what I did mean was that it was a good product, but having that—the patent office giving them that trade-mark and all, that it would be obliged to be a good—good product.

Q. You reach that conclusion by the fact, do you not, that it appears on this exhibit that this trade-mark and label design are registered in the United States Patent Office? A. (The witness nodded her head.)

Trial Examiner Furnas: The witness nodded her head.

647 Q. And you reached the conclusion that the United States Patent Office would not allow a trade-mark or a label design to be registered unless the product was a nice product; is that right? A. Was a good product.

Q. Yes. And so it has the approval of the United States Patent Office. Is that what you meant by having the approval? A. I suppose I did, because it was all new to me.

Q. And have you ever bought any of these articles? A. I have not.

Q. Ever been asked to purchase them? A. I have, and I —(laughter)——

Q. You have been asked to purchase them? A. And the
648 answer I made, and that is the way you all got my name; and I lost sight of it. It was about a year ago and I didn't know what you all wanted with me. So I really wasn't much prepared to——

Q. Have you ever purchased any of these towels? A. No; I have never seen them on sale here in Staunton.

Q. Never seen them on sale. Well, had you ever seen these toilet tissues? A. Never.

Q. That has never been on sale here, as far as you know, has it? A. Not at the store where I deal.

Q. Well, any store that you know of? A. No, I have never seen it.

Trial Examiner Furnas: Anything further?

Mr. Sykes: I think that is all.

Trial Examiner Furnas: All right. Anything further?

Mr. Morgan: Just one question here.

Redirect Examination by Mr. Morgan:

Q. Miss Hedrick, you have been asked about this trade-mark on here, the A. P. W. Paper Company, and the Patent Office, and so forth. I will ask you: If you saw this product —either one of them—on a shelf in a store where you were shopping—— A. No. 650

Q. No. Wait. I say, if you saw it there and you bought it and decided to buy the product, would you be led to buy it by reason of the principal labeling or the little fine trade-mark on that?

Mr. Sykes: That type of question—it isn't necessary for me to repeat my objection to it as speculative?

Trial Examiner Furnas: No. Your objection is overruled. She may answer it. Exception.

A. The red cross would sell it to me. 651

Mr. Morgan: That is all.

Trial Examiner Furnas: Have you anything further?

Mr. Sykes: I think I had better ask this witness another question or two.

Trial Examiner Furnas: All right.

Recross Examination by Mr. Sykes:

Q. The red cross is used on other articles than this particular trade-mark; isn't it? A. I don't know if it is a red cross, but it is a big cross like that on different things.

652 *Miss Anna Hedrick—For the Commission—Recross*

Q. Have you seen shoes, Red Cross shoes? A. (The witness nodded her head).

Q. Well, do you think that that is a pretty good article? A. Yes, I certainly do. They certainly have a good reputation anyway.

Q. And do you use any Band-Aid or absorbent cotton in your home? A. At times, yes.

Q. Is the red cross used in connection with that product? A. Yes.

Q. Do you associate that as a good product? A. I do.

653 Q. You think that that has the approval of the American Red Cross Society? A. Well, I suppose so; anything that is made by these people would have their approval.

Q. You are using "approval" in the broad sense of having generous thoughts by reason of its being helpful or being good? A. Yes.

Q. They approve everything that is good in the world and disapprove everything that is bad? You mean that in that sense, Madam? A. Well, I know they do.

Q. That is the sense in which you have used the word "approval", is it not, in the same sense that you approve the works of the good people in your church and you disapprove some of the works of some of the bad people in town?

654 A. Yes, that is my idea of "approval".

Mr. Sykes: Yes. That is all.

Mr. Morgan: That is all.

Trial Examiner Furnas: You are excused.

(Witness excused.)

Trial Examiner Furnas: There is no other witness here; is there?

Mr. Morgan: Yes, I have one more, but not here.

Trial Examiner Furnas: We will take a short recess.

(There was a short recess taken.)

Trial Examiner Furnas: Are you ready, gentlemen, to proceed?

Mr. Morgan: Yes, your Honor.

Trial Examiner Furnas: On the record. You will note that the recess has ended.

MRS. J. G. CRONISE was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Morgan:

Q. You are Mrs. J. G. Cronise? A. Right.

Q. And you live here in Staunton, Mr. Cronise? A. Yes; I live at 218 East——

Q. Ma'am? A. I live at 218 East Frederick Street.

Q. 218 East Frederick Street. Are you a housewife? A. Yes.

Q. Yes, ma'am. Mrs. Cronise, do you know of the Red Cross, the American Red Cross? A. Yes, I do.

Q. Just in your own language, what do you understand the Red Cross to be? What is it to you? A. It is an organization to help the wounded and needy, poor, especially in wars, but not only through the war, but at any time it needs it.

Q. Do you know whether or not this Red Cross of which you speak has any sign or mark or emblem by which it is known? A. Yes; it always has a sign of the red—the red cross and the word—name "Red Cross".

Q. You mean the words "Red Cross"? A. Yes.

Q. Yes, ma'am. Mrs. Cronise, I am going to show you what we call Commission's Exhibit 8 in this matter, and I will get you to look at the printed matter, labeling, words,

any marks on there, everything except any writing. A. Just what is printed? (Witness examines exhibit.) All right.

Q. Yes, ma'am. Now, having examined that exhibit, I will get you to state whether or not you have the impression that the Red Cross may have anything to do with that exhibit. A. Yes, I would, because it gives you the impression it is registered and all, legalized, and it has the red cross on it, and it has the words "Red Cross" on it, and my impression would be that it had something to do with the Red Cross in some way, to help the Red Cross, or maybe especially sanitary and something to that effect. I don't know whether
659 I have expressed it right or not.

Mr. Morgan: That is all right. That is all.

Trial Examiner Furnas: Cross examine.

Cross Examination by Mr. Sykes:

Q. Madam, don't they use the word "American" with the Red Cross, American Red Cross? A. I am not—are you speaking to me?

Q. Yes. A. Not always, I believe. It is my impression it is not always used, American Red Cross.

Q. When you see the sign of the Red Cross and you see the words with it, are the words "American Red Cross"?
660 A. I was going to say I don't think it is always the case. I may be mistaken, but I don't think so.

Q. Yes. Now, have you ever purchased any of this A. P. W. Red Cross toilet tissue? A. No, sir, not to my knowledge. I have never seen it on sale.

Q. Haven't seen it on sale? A. Huh-uh.

Q. Have you seen the Red Cross towels of the A. P. W. Paper Company, Exhibit 11? A. The only thing—time I have seen the advertisement was when they came by my house, about a year or so ago, some one who was connected with the Federal Trade Commission. She wanted to know—she showed me the cover, I think—maybe she had the towels; didn't have

the toilet paper—and she asked me what impression that would make on me, seeing that red cross and the name "Red Cross", whether I would think it was in any way connected with the Red Cross. I haven't seen it on sale, and I haven't bought any on sale.

Q. You observe, Madam, that this is sold under a trademark, "Registered United States Patent Office"? A. Well, it has the Good Housekeeping sign on it.

Q. It has the Good Housekeeping sign on it. It has the name of the A. P. W. Paper Company of Albany, New York? A. Yes.

Q. And what impression do you have as to who manufactures that product? A. The A. P. W. Paper Company, Albany, New York. 662

Q. And you also have the impression made on your mind that the A. P. W. Paper Company has registered that as a trademark with the United States Patent Office? A. Yes; it says that, "Registered."

Q. Yes. The A. P. W. Paper Company are representing this as something of their own manufacture which they have registered with the United States Patent Office? A. Yes, sir.

Q. Now, you don't think that the American Red Cross Society is engaged in the manufacture of paper; do you? A. No.

Q. No., A. No. I suppose not, but that is the first impression you get, and that is what I was asked, for my first impression. 663

Q. And is your second impression an impression that the American Red Cross is engaged in business?

Mr. Morgan: She did not say that was her first impression, or second, either.

Mr. Sykes: Possibly I misunderstood you.

Trial Examiner Furnas: What was it? The Examiner——

Mr. Morgan: She did not say anything about——

Trial Examiner Furnas: What is the question?

Mr. Sykes: Will you read the prior question and the answer to it?

(Previous record read by reporter.)

Trial Examiner Furnas: And then you are objecting to the question?

Mr. Sykes: I will withdraw it.

Trial Examiner Furnas: All right. Proceed.

A. You asked me what my second impression was?

665 Q. Yes. A. Well, I didn't know that it was, if it is.

Q. Don't you know that the American Red Cross Society does not engage in any commercial activity of any nature? A. To my knowledge, it doesn't. I don't know everything about it.

Q. You don't know anything about it? A. Everything about it.

Q. Madam, you state, as I recollect your testimony, that you had an impression that the American Red Cross Society had something to do with this paper? A. Yes.

Q. What did you mean by "something to do with the paper"? A. In some way backed it, the sale of it and the

666 manufacture of it.

Q. You mean they have a financial interest in the paper company? A. It might be for the benefit of the Red Cross Society—organization.

Q. I am not asking you what might be. I am asking what the impression in your mind is—— A. Yes, that is——

Q. —that this paper is prepared for the benefit of the American Red Cross Society? A. Yes, and to be made for public use to be backed by the organization and may be for the benefit of the organization. It is more the first impression that I was giving.

Q. Yes. Now——

Trial Examiner Furnas: Just a minute. Let the witness finish her statement.

Mr. Sykes: Well, the first impression——

Trial Examiner Furnas: Go ahead and finish your statement.

A. Well, that was what the lady asked me when she came to the door, the first impression, which I gave them. As I say, I am not clear as to what the exact function of the Red Cross is except that it is to help the poor and needy and sick at any time, especially during the war.

Q. You know that it is a charitable organization? A. 668
Charitable organization.

Q. You know that it is supported by all of the people of the country? A. Yes.

Q. Are you under the impression that they pick out some particular product as opposed to other products of the same nature and support that particular product? A. Well, this product is something that could be used in the Red Cross work more than other products, paper and towels, and this paper is sanitary—supposed to be; and the Red Cross is supposed to be sanitary.

Q. Now, you have only talked this matter over once before with somebody that came to see you? A. When I saw it 669
I had forgotten about it and I couldn't imagine what that paper was about.

Q. How long ago was that? A. As I recall, it was approximately a year ago.

Q. What did the young lady who saw you say? A. She says, "I——" as near as I remember, "I am representing the Fair Trades Commission, and I am trying to get the impression that this label would give the public on the paper towels." That was what she said.

Q. The paper towels? A. Yes. And I told her my first impression, which I told you.

Q. You know that the Red Cross mark is used on other products; do—— A. Yes——

Q. —do you not? A. Yes. It is used on sanitary cotton.

Q. Yes. And you have a like impression there, that this sanitary cotton company in some way has the backing or approval of the American Red Cross Society? A. Yes; I had the same impression.

Q. And there are some shoes, the Red Cross shoes, you know about; don't you? A. Yes.

Q. And you think that in some way that shoe manufac-
671 turing company is supported by the Red Cross Society? A. No, but it is supposed to be a specially comfortable shoe that would be recommended by the Red Cross Society—organization.

Q. You mean that it is recommended by it?

Trial Examiner Furnas: "Supposed to be." That is the witness' answer.

A. Supposed to be; that is the impression.

Mr. Morgan: She said that it would be recommended.

672 Mr. Sykes: She said that it would be recommended. Now, what I want to get at is——

The Witness: I said it is supposed to be an especially comfortable shoe that——

Q. Yes. Now, are you under the impression that the American Red Cross Society approves all of these products that are supposed to be sanitary and comfortable and what not? A. Well, they could.

Q. I know they could, but I am asking what—it is not what the fact is. What do you think? A. What I think?

Q. Yes. A. I think they have something to do with it or else it is not exactly a fair trade. It gives the public the impression that they do if they don't.

Q. It gives you—— A. Yes.

Mr. Sykes: I move to strike out what it gives the public.

Trial Examiner Furnas: Yes; so ordered.

Q. And you know of the Red Cross mattress? A. No, I don't know that.

Q. Do you know the Red Cross food products? A. No. 674

Q. Never had occasion to—— A. Can't think of any.

Q. Isn't it a fact that what that conveys to your mind is that this is a sanitary sign and that the people are holding this out as a sanitary product? A. Yes.

Q. Is it anything more than that?

Trial Examiner Furnas: Now, just a minute, to clarify that. You say "the people." Do you have reference to the Respondent or to the public? I would just like for you——

Mr. Sykes: How does the question read?

Trial Examiner Furnas: Read the question. I don't believe you wanted it that way.

675

(Question read by reporter.)

Trial Examiner Furnas: By "people" you mean the Respondents?

Mr. Sykes: Yes.

Trial Examiner Furnas: All right.

A. That is the principal thing in my mind, though there is a possibility that back of it the Red Cross is supporting it.

Trial Examiner Furnas: I didn't get that answer.

The Witness: The principal thought in my mind is that it is a sanitary product, but then I say back of

that there is a possibility the Red Cross may be supporting it.

Trial Examiner Furnas: That is your opinion?

The witness: Yes.

Mr. Morgan: That is what she was asked for.

Trial Examiner Furnas: Yes.

By Mr. Sykes:

Q. You are referring to a possibility—— A. Yes, sir.

Q. —of the Red Cross being behind it? A. Because,
677 as I said before, I don't know the ins and outs of the Red Cross organization.

Q. All right.

Trial Examiner Furnas: Anything further, Mr. Sykes?

Mr. Sykes: That is all.

Trial Examiner Furnas: Anything further?

Mr. Morgan: Just one question.

Redirect Examination by Mr. Morgan:

Q. Mrs. Cronise, you were questioned by the gentleman at the other table there about a visit of some Federal Trade
678 representative to see you. As I understand it, he showed you an exhibit or sample of these products and asked you about your impression, as to what impression it made on you? A. That is it.

Q. In answer you gave him your impression? A. Yes.

Q. He didn't tell you what to say; did he? A. No, not at all. I was not led to think or suspect that—except the fact that he said he belonged to the Fair Trades Commission, but my opinion was unbiased by anything he said.

Q. And you gave him your opinion then—— A. Just as I am now.

Q. —just as you did today, as to what you think? A. Yes, sir.

Q. Freely and voluntarily? A. Yes.

Q. Without anybody suggesting anything? A. No. Nobody was around but the lady and myself.

Mr. Morgan: That is all.

Trial Examiner Furnas: That is all. You are excused.

(Witness excused.)

Trial Examiner Furnas: Anything further? 680

Mr. Morgan: That is all until 1:15.

Trial Examiner Furnas: Now, what is your further pleasure, gentlemen? It is 12 o'clock. When will your next witness be here?

Mr. Morgan: My next witness, if your Honor please will be 1.15. They have to come in from a distance.

Trial Examiner Furnas: Mr. Reporter, you will note that the hearing is now adjourned at 12:00 o'clock to reconvene at 1:15 in this room.

The hearing is now adjourned.

(Whereupon, at 12:00 o'clock, noon, the hearing was adjourned.) 681

AFTERNOON SESSION

1:15 p. m.

Trial Examiner Furnas: Mr. Reporter, you will note that the hearing will be now convened at 1:15 and we will proceed.

Mr. Attorney, what is your further pleasure?

Mr. Morgan: We are ready to swear the witness.

682 *Mrs. W. L. McGuffin—For the Commission—Direct*

MRS. W. L. MCGUFFIN was thereupon called as a witness for the Commission, and having been first duly sworn, testified as follows:

Direct Examination by Mr. Morgan:

Q. Mrs. McGuffin, where do you live, please, Ma'am? A. 221 West Nelson Street, Lexington, Virginia.

Q. Lexington, Virginia? A. Yes, sir.

Q. How far is that from here? A. Well, according to the road, 36 miles.

Q. Are you a housewife, Mrs. McGuffin, keep house?
683 A. Yes, sir.

Q. Do you know of the red mark and Red Cross, the Red Cross, what it is? A. Yes, sir.

Q. Just in your own way and as briefly as you can, tell us what the Red Cross is. A. Well, so far as I know, it helps——

Mr. Sykes: You mean the Red Cross Society?

Mr. Morgan: Yes, the Red Cross Society.

A. (continuing) The Red Cross Society helps needy people and people who need help. That is so far as I know. The money is contributed by different persons, I think.

Q. Yes, ma'am. Do you know whether this Red Cross
684 Society has a badge or an emblem or a sign by which it is known? A. It has a red cross.

Q. Red Cross? A. Yes, sir.

Q. Any words go with that cross? A. I don't recall that.

Q. Well, that is all right. Mrs. McGuffin, just for a moment I want to let you imagine that I am a store keeper, I am running a store, and I am going to set some of these products up here like they were on a shelf. Can you read the principal labeling on those products from where you sit?

Mr. Sykes: Just a minute.

Trial Examiner Furnas: Just a minute. Let her answer, and if it isn't proper you can object to it.

Mr. Sykes: I want to let it appear on the record something as to what the distance is.

Trial Examiner Furnas: You can put that in.

Mr. Morgan: These packages are probably 15 feet from the witness.

Trial Examiner Furnas: Approximately, I would say. What do you say?

Mr. Sykes: I would say 17½.

Trial Examiner Furnas: All right. Call it 20.

The Witness: The first you have now is Red Cross Office Towels.

686

Q. Just a minute. I want to finish my question. I did ask you if you can read the principal labeling on these. A. I think I can read it; that is, I can read the big letters. I can't read the small letters.

Q. Would that be the approximate distance an article might be up on a shelf from a customer in a store?

Mr. Sykes: I object to the question as to what distance articles might be. They might be, as they usually would be, on some table or what not.

Trial Examiner Furnas: I am going to let the witness answer. Objection overruled. Exception granted. Did the witness answer? 687

Mr. Morgan: I don't think she did.

Trial Examiner Furnas: Read the question to the witness again.

(Question read by reporter.)

A. Some of them are closer than that and some farther away, but I can read that—I can read those names on there, those big names.

Q. All right. Now, reading those names and principal labels, as you see on those articles from where you are, give us your impression as to what the products are.

688 *Colloquy*

Mr. Sykes: I object to the witness being placed across the room where she can't see.

Trial Examiner Furnas: Just a minute. We will proceed further on, and if it isn't proper you can move to strike it out, if the testimony isn't proper, but he has asked a question now, and I am going to let the witness answer it.

Mr. Sykes: May I have the objection that it is improper under the circumstances——

Trial Examiner Furnas: Oh, yes, yes.

Mr. Sykes: —to put the stuff at a place where
689 you can only read a small portion of it?

Mr. Morgan: Let me examine the witness in my own way and then I will get to that.

Trial Examiner Furnas: Proceed. Proceed.

Mr. Morgan: The witness has not answered the question.

Trial Examiner Furnas: Read the question to the witness, please.

(Question read by the reporter.)

Trial Examiner Furnas: Now, does counsel for the Respondent object to that question?

690 Mr. Sykes: I object to it. The whole thing is misleading, placing the witness a distance from the articles where only a small part is represented and asking the witness what it is.

Trial Examiner Furnas: Objection is overruled, and exception granted. Proceed.

Mr. Morgan: She has not answered it yet.

Trial Examiner Furnas. Have you answered it?

Mr. Morgan: No.

The Witness: Do you want me to answer if I can read that from there?

Q. No; what those articles are, what they impress you as being from what you can read and see. A. I can see them plain enough from here, where I am sitting.

Q. Can you give the Judge there your impression as to what those products are from what you can see of them? A. One is Red Cross Towels, and the other is toilet tissue and the other is office towels.

Q. State whether or not you have the impression that the Red Cross has anything to do with those toilet towels. A. I know they use that; that is all I know.

Q. How? A. They use those towels, that product, I suppose, but outside of that I don't know whether they have 692 anything to do with it.

Q. You mean the Red Cross uses them? A. I don't know.

Mr. Morgan: She said "they" use them. I don't know whom she meant.

Trial Examiner Furnas: Did you mean the public or did you mean the Red Cross uses them, or just what——

The Witness: The public used that.

Trial Examiner Furnas: —used that?

By Mr. Morgan:

Q. State whether or not, Mrs. McGuffin, you associate 693 those products in any way with the Red Cross. A. Only by the red cross that is on them.

Q. And that is the reason that you do so? A. That is the reason I would connect them with the Red Cross, is by the red cross that is on them.

Q. Yes, ma'am. Now, I am going to ask you a question as my distinguished adversary would like me to ask it. I will bring these right up close to you. I will ask you to read all the little writing on these things, little printing on these exhibits, which are Commission's Exhibits 8 and 10. Just read all the little——

694 *Mrs. W. L. McGuffin—For the Commission—Cross*

Trial Examiner Furnas: Just take them in your hand.

Q. Take them in your hands.

Trial Examiner Furnas: And look at them carefully.

The Witness: Do you want me to read them aloud?

Trial Examiner Furnas: No.

The Witness: Just to myself?

Trial Examiner Furnas: Just read it over to your-
695 self.

(Witness examines exhibits.)

Q. Now, you have read the small writing on those exhibits. I will ask you this, Mrs. McGuffin: If you go into a store to buy such a product as that, would you buy it by reading the principal label on it, or would you take it down and go all over it and read all the little fine print on it before you bought it? A. I suppose you would buy it by the principal label.

Q. Yes, ma'am.

Mr. Morgan: That is all.

696 Trial Examiner Furnas: Cross examine.

Cross Examination by Mr. Sykes:

Q. Did you notice, Madam, that these articles are sold under a trade-mark "Registered United States Patent Office"? A. Yes.

Q. What is the significance of that to your mind? What is the significance of this trade-mark "Registered United States Patent Office" to your mind?

Trial Examiner Furnas: Let the witness take it in her hand and read it once again anyway.

(The witness examines the exhibit.)

A. That was a trade-mark to distinguish their work from others, I suppose, their mark—and this is to distinguish their patent from other trade-marks.

Q. And is there anything on that exhibit to disclose who manufactures it? A. It is the A. P. Paper Company, I suppose.

Q. A. P. W. Paper Company, of Albany, New York, has the trade-mark which is represented on the face of this exhibit? Is that what you would like to say? A. Yes.

Q. Now, Madam, you mean to say that if you should be shown this in a store that you wouldn't see who manufactured it and that it was a trade-mark article? You don't 698 want us to understand that; do you? A. If I hadn't been accustomed to buying it I might.

Q. Yes. If you were going to buy it you would look at it and notice the trade-mark? A. Yes.

Q. Now, when you associated this mark with the American Red Cross Society, did you mean anything more than that the American Red Cross Society had a symbol which was like this trade-mark? A. It is supposed to be good.

Q. No. Did you mean anything more than that your association was—was it anything more than this: That each of them have the same symbol? A. No.

Trial Examiner Furnas: A little louder, please. 699 Speak a little louder.

Q. You mean that the association would rest on the symbol, or what would it rest on? A. The goods, I suppose, the value to it.

Q. The what? A. The goods, or the paper, rather.

Q. You mean you would associate the paper with the American Red Cross Society? A. No, not that, but the value of the paper, I say. Associate that with the Red Cross because it would be of value to them.

Q. Because of what? A. Value. The Red Cross is valuable and is useful and so is this.

Q. Are you under the impression that this is manufactured by the American Red Cross Society? A. I am not sure, I don't think so.

Q. It doesn't convey that impression to you? You did not have any impression that the American Red Cross Society was manufacturing it; did you? A. No, sir.

Q. As a matter of fact, you are a member of that Society; are you not? A. No, I am not right now.

Mr. Morgan: May it please the Examiner, it doesn't amount to anything, but just to clarify the
701 record, counsel has asked that question repeatedly: about being a member of the Red Cross. Well, now, that is a confusing question for this reason: As I understand it, there are Red Cross Chapters in pretty nearly every county in the United States of which people are members. On the other hand, there is a general Red Cross movement each year or more than once a year throughout the country in which the people contribute to the Red Cross and they are called members, and I would like for counsel to specify what kind of a member he means, whether he means a member of a Chapter or just a contributor to the Red Cross.

702 Trial Examiner Furnas: The Examiner has learned something now.

Mr. Sykes: Yes; so have I.

Mr. Morgan: Well, that is a fact.

Mr. Sykes: He can bring out what he wants to bring out, Mr. Examiner, I think, on his redirect.

By Mr. Sykes:

Q. I asked you, "Are you a member of the American Red Cross Society?" A. I am not.

Q. Have you ever bought these Red Cross towels made by the A. P. W. Paper Company? A. No, sir, I have not.

703

Q. Or, have they ever been presented to you for purchase? A. No, sir.

Q. Have you ever bought any of the Red Cross toilet tissue manufactured by the A. P. W. Paper Company of Albany, New York, shown as Exhibit 8? A. (The witness nodded her head.)

Trial Examiner Furnas: Just a minute. You said "No", didn't you?

The Witness: Yes.

Trial Examiner Furnas: The reporter does not get that when you shake your head.

704

By Mr. Sykes:

Q. Have you ever seen them on sale at the stores? A. No, sir.

Q. No. You, I understand, personally have never had any occasion to go into a store and determine, by buying or not buying, the impression that these particular articles would make on you; is that right? A. Yes.

Q. Now, have you ever seen these wrappers of these exhibits before? A. About two—two summers ago there was a fellow traveling through the country with this article wanted my opinion on it. I believe it was summer before last.

705

Q. Just what did he say? A. About the same questions you asked me right now, what I thought of this product.

Q. What you thought of that product? A. Yes, and whether I connected it with the Red Cross, and if I connected it with the Red Cross or not; a young man traveling.

Q. Did he ask you how it was connected? A. Yes, he asked me how it was connected. I told him I didn't know.

Q. Yes. Did he ask you if you got the impression that the Red Cross Company made the article? A. Yes, sir.

706 *Mrs. W. L. McGuffin—For the Commission—Cross*

Q. Did he ask you if you got the impression that this was a trade-mark of the A. P. W. Paper Company? A. I don't recall that.

Q. You don't. Your attention was not called to that? A. No, I don't think so. At least, I don't recall it now.

Q. Am I right in understanding that your connection is merely each of them have a red cross? A. Yes, sir.

Q. Anything more than that? A. Not that I know of.

Q. The Red Cross has a red cross; this has a red cross? A. Yes.

Q. When you saw this you thought of the American Red
707 Cross? A. Yes, sir.

Q. Is that all? Was that all the connection that came to your mind in that respect? A. Yes, sir.

Mr. Sykes: That is all.

Mr. Morgan: Just one question.

Mr. Sykes: Oh, I am not through.

Trial Examiner Furnas: Oh, excuse me.

Mr. Morgan: I thought you were through.

Mr. Sykes: I did mislead you.

Mr. Morgan: I thought you were through. I am sorry.

708 *By Mr. Sykes:*

Q. Have you seen the Red Cross symbol used on other articles, Madam? A. Don't think so.

Q. And do you wear Red Cross shoes? A. Not now I don't. I used to.

Q. Used to? A. Yes, sir.

Q. Did they have a red cross on there? A. Yes, sir.

Q. Did you associate that with the American Red Cross, too? A. No, sir; I just associated that with the shoe company.

Q. Yes, sir. With the shoe company. Why did you associate that with the shoe company and not with the American Red Cross? A. I don't know, couldn't tell you.

Q. At that time the American Red Cross was not making a drive for funds; is that right? A. Not at that time.

Q. The American Red Cross was not so much in your eye and in your thought as it is at the present day? May that have had something to do with it? A. Yes, sir, I suppose.

Q. If you would see the Red Cross shoes today with the red cross sign, would that bring to your mind the American Red Cross Society? A. Yes, sir. 710

Q. It would? A. At the present time it would.

Q. Now, are there any articles which you use in connection with medication which have the red cross on them? Absorbent cotton? Have you ever used that, Madam? A. Yes, sir.

Q. You recognize that that has a red cross on it? A. Yes, that has a red cross on it.

Q. They do? A. And they have a button with the red cross on it that they give you when you join—when you pay your dollar of fees to the Red Cross.

Q. That is the Red Cross membership? A. That is the Red Cross membership. 711

Q. I am talking about things which are not the Red Cross which have the red cross mark. Are there any other instances that you can think of, except this absorbent cotton and these Red Cross shoes? A. Don't recall anything.

Mr. Sykes: I guess that is all.
Mr. Morgan: Is that all? Just one question.
Trial Examiner Furnas: All right.

Redirect Examination by Mr. Morgan:

Q. Mrs. McGuffin, do you know of more than one red cross emblem?

Mr. Sykes: She already testified that she has seen three of them.

Mr. Morgan: Wait a minute. You have been asking her about this emblem and that emblem. I want to develop just a little from her.

A. You want the one that is connected with the real Red Cross or——

Q. The red cross emblem. You know of just one Red Cross emblem. I understood you to say it was the red cross, red cross sign, it was just the red cross, I believe you said?

713

Trial Examiner Furnas: Do you understand the question?

Mr. Morgan: I will put it this way:

By Mr. Morgan:

Q. Are there two Red Cross emblems that are different or is there just one Red Cross emblem, so far as you know? A. So far as I know, there is just one.

Q. Now, I just want to get the working of your mind to straighten this out. In looking at these exhibits which you have seen over here, the Red Cross which you noted on those

714 exhibits, so far as you can tell, is that the same red cross that typifies the Red Cross Society? A. As far as I can see, it does.

Mr. Morgan: That is all.

Trial Examiner Furnas: Anything further? You are excused.

(Witness excused.)

Mr. Morgan: I will call Mrs. McCoy, please.

MRS. R. H. McCOY was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Morgan:

Q. You are Mrs. R. H. McCoy? A. That is right.

Q. Of Lexington, Virginia? A. That is right.

Q. Where do you live in Lexington, Mrs. McCoy? A. 101 Meyers Street.

Q. Meyers Street. Are you a housewife, Mrs. McCoy? A. I am a housewife and practical nurse. 716

Q. Yes, ma'am. You know of the Red Cross, do you, Mrs. McCoy—— A. Yes.

Q. —the American Red Cross? A. The American Red Cross.

Q. Just briefly and in your own way, what does that mean to you? What is it? A. Well, to me I think it is an organization that does a wonderful lot of good, a society that takes care of the needy.

Q. Do you know whether or not that organization has an emblem or a sign by which it is known? A. The red cross.

Q. The red cross. I show you here Commission's Exhibit No. 8, get you to look at that, the marks on it, and 717
just ignore the writing. After you have looked at it, why, give Judge Furnas your impression as to what it is, what impression it makes on you A. Well, when you see the red cross you naturally think of good, and anything with the label—I wouldn't connect it with the American Red Cross at all if I was going in a store to buy an article. I wouldn't think that the American Red Cross had put them out.

Q. Seeing that cross on there, would you or would you not have the impression that the product is approved by the Red Cross? A. Not necessarily.

718 *Miss Grace M. Brunk—For the Commission—Direct*

Q. Not necessarily. Would you have the impression, or would you not, that the Red Cross is connected with that product in any way? A. No, I don't think that I would because I know myself that the Red Cross doesn't deal in those kind of things.

Q. You know that. Yes, ma'am.

Mr. Morgan: That is all.

Trial Examiner Furnas: Cross examine.

Mr. Sykes: No cross examination of Mrs. McCoy.

Trial Examiner Furnas: All right. You are ex-

719 cused.

(Witness excused.)

Trial Examiner Furnas: Call your next witness.

Mr. Morgan: Now, Miss Grace M. Brunk, will you come forward, please?

MISS GRACE M. BRUNK was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Morgan:

720 Q. You are Miss Grace M. Brunk, from Harrisonburg? A. Yes.

Mr. Sykes: Harrisonburg, Virginia, is that it?

Mr. Morgan: Harrisonburg.

Trial Examiner Furnas: Oh, will you please develop the distance there?

Mr. Morgan: Yes, I will.

Trial Examiner Furnas: All right.

By Mr. Morgan:

Q. How far is that from here, Miss Brunk? A. Twenty-five miles.

Q. Twenty-five? A. Twenty-five.

Q. One way? A. Yes, sir.

Q. Yes, ma'am.

Trial Examiner Furnas: All right.

Q. You know of the Red Cross, do you, Miss Brunk? A. Yes, sir.

Q. The American Red Cross? A. Yes, sir.

Q. What it stands for? A. Yes.

Q. Can you tell us briefly just what you understand it to be? A. It is an organization to serve the those in need, 722
those that need help.

Q. To your knowledge, does it have a sign or a badge, an insignia to go with it? A. Yes, it does.

Q. What is it? A. The red cross.

Q. The red cross. I show you this exhibit here, Commission's Exhibit No. 8, and get you to look at that and give us your impression as to what it is. A. (After examining exhibit) I think it is paper put out by a company.

Q. Ma'am? A. It is paper put out by a company.

Q. Would the branding and labeling on that indicate to you, or would it not, that that product is related to the Red Cross in any way?

Mr. Sykes: Product is related to the Red Cross? 723

A. I don't believe it would to me, but I believe it would be misleading. I think I would be deceived. The cross sign would naturally remind you of the Red Cross.

(Answer read by reporter.)

Mr. Sykes: I move to strike "it would be misleading" and "she would be deceived".

Mr. Morgan: That is her answer, your Honor.

Mr. Sykes: The witness is first stating her own impression, to wit, that she wouldn't believe it had anything to do with the Red Cross. The balance of it is what other people think.

Trial Examiner Furnas: Now, let us read that again. I did not exactly understand. I understood that "it would be misleading to me." Read the question again. The Examiner may be wrong, but read that question again.

(Question and answer read by reporter.)

Trial Examiner Furnas: Yes. She said "I believe it would be misleading and I would be deceived." So I am going to let it stand and overrule the objection.

725 Mr. Sykes: First, she states that it wouldn't be to her.

Trial Examiner Furnas: But she says—read the last part of the answer. Read her last answer there and see what she says.

(Answer again read by reporter.)

Trial Examiner Furnas: Yes.

Mr. Morgan: She states a reason for that.

Trial Examiner Furnas: Yes. Objection overruled, and exception granted.

By Mr. Morgan:

726 Q. Miss Brunk, another question, please. State whether or not the branding and labeling on that exhibit would suggest to you any Red Cross standard for that product. A. Any Red Cross standard of the product?

Q. For the product, yes, ma'am, for the character of the product, its excellency. A. Not from the Red Cross, American Red Cross.

Q. Not the Red Cross? A. No, sir.

Q. Would you say that that branding or labeling would indicate to you, we will say, approval of the article by the Red Cross? A. That it was approved by——

Q. Approval of it. A. Approved by the Red Cross?

Q. By the Red Cross. A. I—I think it—it might give me that impression.

Q. That is all I want, is your impression.

Mr. Morgan: That is all.

Trial Examiner Furnas: Cross examine.

Mr. Sykes: I move to strike out "it might give me that impression."

Trial Examiner Furnas: No. I am going to let it stand for what it is worth. Objection overruled.

Mr. Sykes: No; the motion——

Trial Examiner Furnas: Yes; motion denied. 728

Cross Examination by Mr. Sykes:

Q. Miss Brunk, you examined the exhibit with care; did you not? A. Yes, sir.

Q. Did you observe that there is an A. P. W. Paper Company—— A. Yes, sir.

Q. —of Albany, New York, on it? A. Yes, sir.

Q. And is it your understanding that the A. P. W. Paper Company manufactures this? A. Yes, sir.

Q. Have you observed that there is a mark there, a trade-mark, "United States Patent Office"? A. Yes, sir.

Q. And it is your understanding, in the face of that, that 729
the A. P. W. Paper Company has a trade-mark which has been granted to them by the United States Patent Office for the use of that symbol or emblem? A. Yes, sir.

Q. Now, I gathered you did not have any idea in your mind that the American Red Cross Society is engaged in the manufacture of toilet paper; did you? A. No, sir.

Q. Are you connected with the American Red Cross? A. No, sir.

Q. You are not a member? A. Not absolutely—yes, I am a member, I suppose. You could consider me a member.

Q. Yes. A. Because I subscribe to it.

730 *Miss Grace M. Brunk—For the Commission—Cross*

Q. Have you had occasion to purchase the article——

Mr. Morgan: Just a minute now.

Trial Examiner Furnas: Just a minute.

Mr. Morgan: I would like to have the record corrected. You don't mean——

Mr. Sykes: Well, now——

Trial Examiner Furnas: Just a minute. You can develop that later on. Don't interrupt——

Mr. Morgan: O. K.

Trial Examiner Furnas: —cross examination.

731 *By Mr. Sykes:*

Q. Have you had occasion to purchase this tissue, toilet tissue, sold by the A. P. W. Paper Company? A. No, sir, I can't recall of ever having——

Q. Has it been brought to your attention at any time? A. I don't know that it has.

Q. Yes. A. Don't recall.

Q. Have you ever seen any of the products of the A. P. W. Paper Company bearing the trade-mark which is before you? A. I have—I remember them being at the door with some of the products, but I really don't remember just what it was.

732 Q. Was that somebody from the Government? A. I don't suppose so. I don't think so. I don't think so.

Q. That states specifically, on its face that it is a trade-mark, does it not, of the A. P. W. Paper Company? A. It certainly does.

Q. It certainly does. What is there misleading in the statement that that is a trade-mark of the A. P. W. Paper Company? A. I think the cross itself is misleading.

Q. Oh, the cross itself you connect with the American Red Cross Society? A. I think you naturally—people would believe that they are connected.

Q. Are you talking about what other people would think, or are you talking about what impression you actually receive? A. Well, I naturally wouldn't think so.

Q. You wouldn't think so? A. No, not myself.

Mr. Sykes: I move to strike out the testimony as to what other people would think.

Trial Examiner Furnas: All right. Strike it out.

Mr. Sykes: That included the stuff further back.

Trial Examiner Furnas: No, not the part that I left in on that other.

Mr. Sykes: Where she stated that "I would be misled." 734

Trial Examiner Furnas: This only applies to the questions that you asked her right now. If you wish to strike out anything more, make a motion and then the Examiner will rule on it.

Mr. Sykes: I move to strike out, in view of what the witness now says, the latter part of the statements in that answer to which we have referred in which the witness stated, after stating that she wouldn't gain that impression, "I would be misled."

Trial Examiner Furnas: Yes.

Mr. Sykes: Because, in view of the present testimony, it appears that she now is talking about the 735 thoughts of other people.

Trial Examiner Furnas: Have you finished your statement?

Mr. Sykes: Yes.

Trial Examiner Furnas: Motion denied and exception granted.

Proceed.

Mr. Sykes: Now, Mr. Stenographer, will you turn back to that——

Trial Examiner Furnas: Well, the Examiner has ruled on it.

736 *Miss Grace M. Brunk—For the Commission—Cross*

Mr. Sykes: Yes. Will you turn back to the answer to which we referred? I am going to ask you specifically about that.

Trial Examiner Furnas: All right.

(Record read as follows by the reporter: "I don't believe it would to me, but I believe it would be misleading. I think I would be deceived. The cross sign would naturally remind you of the Red Cross.")

737 *By Mr. Sykes:*

Q. Now, Madam, turning back to that answer, you did not mean that it would be misleading to you? A. That is it.

Q. You do want to convey the impression that that would mislead you? A. It wouldn't mislead me.

Q. No. Your impression is as to its effect on other people? A. Yes.

Q. Well, when you say that "I would be deceived by it", you mean that other people might be deceived? A. Yes, sir.

Q. You were giving your impression as to the effect on other people? A. Yes.

Q. But you did not want us to understand that you as an intelligent woman, reading that mark showing it is manufactured by the A. P. W. Paper Company under its trademark, would be deceived into thinking that that was a Red Cross article? A. No, sir.

738

Trial Examiner Furnas: But what I want to understand is, did you mean when you used the words "I would be deceived" that you were referring to other people or did you refer to yourself?

The Witness: I was referring to myself.

Trial Examiner Furnas. All right. Anything further?

By Mr. Sykes:

Q. Well, you want to withdraw the statement that you would be personally deceived from reading that paper?

Mr. Morgan: That is what she said.

Trial Examiner Furnas: That is what she said.

Mr. Sykes: I don't care what she said. I want to know whether she now means that she wants to withdraw the statement that she personally would be misled in reading the sign.

The Witness: I wouldn't be misled.

740

By Mr. Sykes:

Q. Yes. And you do wish to withdraw that statement that you would be deceived? A. Yes.

Mr. Sykes: All right.

Mr. Morgan: Just one question.

Redirect Examination by Mr. Morgan:

Q. I understood that what you said about deception there was based entirely upon the suggestion given by the use of the Red Cross emblem, isn't that it, on that product? A. State that again. 741

Q. I mean any deception you had in mind when you were answering those questions, that deception was based on the use of the identical Red Cross emblem on that product; wasn't it?

Trial Examiner Furnas: Let the witness answer and if it isn't proper you can move to strike it. Do you object?

Mr. Sykes: I want to object to the question. He is talking about deception.

Trial Examiner Furnas: Objection overruled. Exception granted.

Mr. Morgan: She nodded "Yes."

Trial Examiner Furnas: Your answer is "yes," to that question?

The Witness: Yes.

Trial Examiner Furnas: That is all right.

Mr. Sykes: May I have the question, please?

Trial Examiner Furnas: Read the question.

(Question and answer read by reporter.)

743 Trial Examiner Furnas: That is the way the Examiner understood it.

Mr. Morgan: One question, your Honor.

Trial Examiner Furnas: All right.

By Mr. Morgan:

Q. Mr. Sykes asked you just now about whether you belonged to the American Red Cross.

Mr. Sykes: I used the word "Society."

Mr. Morgan: Well, "Society." The American Red Cross Society. We will take the whole corporate name in. Did you mean by your answer there that you
744 belonged to, say, a Red Cross Society in your county or that you have contributed to the Red Cross? A. I have contributed.

Q. That is what I thought. A. I have contributed.

Recross Examination by Mr. Sykes:

Q. When you contribute one dollar you get a card of membership; do you not? A. I beg your pardon?

Q. When you contribute a dollar you get a card of membership; do you not? A. Yes.

Q. Now, Madam, referring to your last answer to my wise friend over here, you said in effect that any deception that you had in mind was based on the Red Cross emblem. You were there referring to any deception that other people might have by reason of the use of this emblem; were you not? A. Yes, sir.

Q. It would not deceive you if this emblem were used? It would not make you think that this was an American Red Cross product; would it? A. No, sir.

Mr. Sykes: I move to strike out the testimony.

Trial Examiner Furnas: Motion denied. 746

Mr. Sykes: Exception.

Trial Examiner Furnas: Exception granted.

Mr. Morgan: That is all.

Trial Examiner Furnas: Anything further?

Mr. Morgan: That is all.

Trial Examiner Furnas: You are excused.

Mr. Sykes: No.

Trial Examiner Furnas: Wait a minute.

Mr. Sykes: Nothing further.

Trial Examiner Furnas: You are excused. Thank you very much.

(Witness excused.)

747

(Discussion off the record.)

Trial Examiner Furnas: On the record now. What does counsel want?

Mr. Sykes: I want to clarify my objection. I think the Examiner got it, but the basis of it is that the witness is purporting to testify as to the mental operation of other parties.

Trial Examiner Furnas: To some extent.

Mr. Sykes: To which she is not qualified.

Trial Examiner Furnas: To some extent.

748 *Colloquy*

Mr. Sykes: Yes.

Trial Examiner Furnas: Well, I think the Examiner struck that part of it out of the first question and left it as to her own mental feelings.

Mr. Morgan: She concluded with the statement it was misleading because of the use of the emblem.

Trial Examiner Furnas: That is the way I understood it.

Mr. Sykes: And her final statement was that she was not misled; that she was talking about the deception of other people. I moved again in the face of that
749 testimony to strike it out and the Court denied it and gave me an exception, so it is all right.

Trial Examiner Furnas: All right.

Gentlemen, what is your further pleasure?

Mr. Morgan: Why, Mr. Examiner, I move that the hearing be adjourned to Lynchburg, Virginia, in Room 202 Federal Building, at 2 o'clock tomorrow, June 19.

Trial Examiner Furnas: Mr. Reporter, you will note that when this hearing adjourns it adjourns to reconvene on June 19, 1942, in the town of Lynchburg, State of Virginia, in Room 202 Federal Building, at
750 2 o'clock p. m.

If there is nothing further, Mr. Reporter, you will note that the hearing is now adjourned.

(Whereupon, at 2:10 o'clock p. m., June 18, 1942, the hearing was adjourned.)

Transcript of Hearing, Dated June 19th, 1942, Lynchburg, Virginia 751

BEFORE THE

FEDERAL TRADE COMMISSION

Docket No. 4747

In the Matter

of

A. P. W. PAPER COMPANY, INC., a corporation.

752

Room 202, Federal Building,
Lynchburg, Virginia,
June 19, 1942.

Met, pursuant to adjournment at 2 p. m.

Before:

MILES FURNAS, Trial Examiner.

Appearances:

MARSHALL MORGAN, Esq., appearing for the Federal Trade Commission.

EMERY H. SYKES, Esq. (Sullivan & Cromwell, 48 Wall Street, New York, N. Y.), appearing for the Respondent. 753

PROCEEDINGS

Trial Examiner Furnas: Mr. Reporter, you will note that the hearing is now convened at 2 p. m. The usual statement that the Trial Examiner makes at this time as to the rules of procedure, I think both counsel for the Commission and counsel for the Respondent are familiar with, and I am going to omit them. but I do wish to say——

Mr. Sykes: I can repeat them by heart.

754 Trial Examiner Furnas: Yes. Let the record show that both counsel for the Commission and counsel for the Respondent are present.

Gentlemen, what is your further pleasure?

Mr. Morgan: If the Commission is ready to resume its hearings, your Honor, we have the first witness here.

Trial Examiner Furnas: All right. Call your witness.

Mr. Morgan: Mr. Potter, please.

Mr. Sykes: Well, I assume that my original ob-
755 jection made at the first hearing as to the general situation still holds——

Trial Examiner Furnas: Yes.

Mr. Sykes: —and also my objections made as to the relevancy and materiality and competency of testimony of this nature, and particularly as to the competency of matters where the witness merely expresses an opinion and hasn't even purchased or doesn't testify as to any representation which is made to him and gives nothing more than an expression of his views as to the effect on himself of the symbol itself. My general objection as to the competency and relevancy and materiality of that continues?

756 Trial Examiner Furnas: Your general objection still stands.

Counsel for the Respondent has got some corrections in the record as follows:

Please state them.

Mr. Sykes: Page 184 of the record, by changing the word "Commission" to "congressional".

Trial Examiner Furnas: Fourth paragraph or fourth line?

Mr. Sykes: Fourth paragraph. The 11th line.

Trial Examiner Furnas: All right. What is the next one?

Mr. Sykes: By adding the word "not" in the 15th line so that it should read "it is *not* vitally material."

Trial Examiner Furnas: All right. And what is the next one?

Mr. Sykes: By adding in the last sentence on that page between "1905" and "used" the word "and" and then a mark showing that the sentence is incomplete.

Trial Examiner Furnas: Yes.

Now, is that agreeable to counsel for the Commission?

Mr. Morgan: It is entirely agreeable.

Trial Examiner Furnas: Mr. Reporter, you will 758
note that both counsel for the Commission and counsel for the Respondent are willing to make the changes in the record, and it is so ordered by the Trial Examiner. All right.

I don't believe counsel for the Respondent has the witness' name yet.

Mr. Morgan: C. W. Potter.

Trial Examiner Furnas: Are you ready for the witness to be sworn?.

Mr. Morgan: Yes, your Honor.

C. W. POTTER was thereupon called as a witness for the 759
Commission, and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Morgan:

Q. Mr. Potter, are you in business here in Lynchburg?
A. Yes, sir. At least I work for Bibee Grocery Company.
Q. And what is their address in Lynchburg, Mr. Potter?
A. Well, I am at one of the stores. Their general warehouse is at 50 11th Street. The particular store in which I am located is 701-03-05 Main Street.

Trial Examiner Furnas: Proceed.

760 *C. W. Potter—For the Commission—Direct*

Q. Mr. Potter, do you know of the Red Cross, the American Red Cross, what it is? A. Well, yes. It is supposed to be an organization of the American public, to the best of my knowledge, for the mercy of the disasters and destruction, or whatever it may be, that occurs at times, and backed by the public, if I am not mistaken.

Q. That organization, which has that mission, or does that work, does it have a sign or an emblem by which it is known? A. Well, it is known by the American Red Cross with the cross, red cross, as the emblem.

761 Q. Mr. Potter, I show you Commission's Exhibit No. 8 here and will get you to look that over in your own way and tell us what impression you get from it, what it is, and so forth.

Mr. Sykes: Mr. Examiner, shouldn't the witness be instructed not to look it over in his own way, but to examine all the printing on it——

Mr. Morgan: Just a minute.

Trial Examiner Furnas: That is all right. That is all right. That is a matter, I think, that you can develop on cross examination if you care to.

Mr. Morgan: Exactly. That is proper cross examination.

762 Trial Examiner Furnas: Instead of bringing it up on direct.

Mr. Morgan: Yes, sir.

Trial Examiner Furnas: I believe that is a matter for you to develop at that time.

Proceed.

You instructed the witness that the writing on there had nothing to do——

By Mr. Morgan:

Q. Well, disregard any pen writing on there, Mr. Potter. A. Only the actual print? The label?

Q. That is all; just the label and things. A. Truthfully speaking——

Q. How is that? A. I say, truthfully speaking, this is, to the best of my knowledge—of course, I am not very familiar with patents or patent rights or——

Mr. Sykes: I cannot hear this witness whatsoever. He puts his mouth down in his chest, and I ask through the Examiner that he be directed to speak to the furthest gentleman in the court room.

Trial Examiner Furnas: Just raise your voice a little.

764

A. The posted cross on here does kind of remind you of the American Red Cross, naturally. Most anybody has seen it. It is seen more than any other emblem except the American Flag and shield of honor which is seen on all public buildings. But on it, I notice here it has a copyright of 1935 which—I don't know what that means or what it represents.

Q. Let me ask you this: From the labeling and marking and branding you find on that exhibit, would you say or would you not say that that would indicate to you some approval or endorsement by the Red Cross? A. Well, truthfully, I would say no.

765

Q. Would that labeling or branding indicate to you any kind of a sanitary standard recommended or approved by the Red Cross? A. I shouldn't think so, no, sir.

Mr. Morgan: That is all.

Trial Examiner Furnas: Just a minute before you cross examine. Off the record.

(Discussion off the record.)

Trial Examiner Furnas: On the record now. Cross examine.

766 *C. W. Potter—For the Commission—Cross*

Cross Examination by Mr. Sykes:

Q. Mr. Potter, are you a general salesman for this Bibee Grocery Company? A. No, sir. I am the manager.

Q. Oh, manager? A. Yes.

Q. And among the products that you handle are the products of the A. P. W. Paper Company? A. Yes; we carry one of them, sir.

Q. Which one do you carry? A. Paper towels.

Q. How long have you carried them? A. Well, approximately—it was there when I come with the company.

767 Q. When was that? A. Six years ago.

Q. Six years ago? A. Yes, sir.

Q. The company hasn't represented to you, has it, in any way that it has any endorsement or approval by the American Red Cross Society? A. No, sir, it has not.

Q. I suppose the Red Cross has been a pretty busy organization down here since the war started; hasn't it? A. Yes; it has been very much talked up.

Q. Yes. Well, before the war started, if you had seen this mark upon this particular product, would you have naturally been reminded of the American Red Cross Society? A. Well, in—generally speaking, not generally clearly thinking, you wouldn't have thought of it because it hadn't been
768 properly brought out or published, I should say, over the—just like the war. If you had never thought of it, why if anybody had said "war," you would have ignored it and went on.

Q. What you mean is that this has a red cross appearing as a trade-mark? A. Well, it didn't look like it would be a trade-mark. Just only a——

Q. Will you read what appears on the back of it? A. It says "Trade-Mark Red Cross" and "Label Design Registered in U. S. Patent Office by American Paper Company, Incorporated, Manufacturers of 1,000 Sheets."

Q. Yes. You need not read it aloud, but I call your attention to the fact that it does appear on there that this is a trade-mark of the A. P. W. Paper Company which has been registered in the Patent Office. Now, that trade-mark—all you mean is that that trade-mark is similar to the American Red Cross sign or symbol? A. Evidently, yes.

Q. And seeing this, now that the American Red Cross has become so important and so much in your consciousness, you are of the impression that it brings to your mind the American Red Cross Society? That is it; is it? A. But it would give you just a general thought of it.

Q. Yes, but it doesn't suggest to you that the American 770
Red Cross Society is manufacturing this paper? A. Oh, no, it does not.

Q. Or that it is financially interested in that paper? A. Evidently no, because they don't state it.

Mr. Morgan: I don't mind, but I did not go into those things in chief. It is all right, though.

Trial Examiner Furnas: Let him go ahead. Go ahead.

Mr. Sykes: All right. If you are satisfied with that, I am.

Trial Examiner Furnas: All right. Anything further?

771

Mr. Morgan: Yes: there is just one question.

Redirect Examination by Mr. Morgan:

Q. Mr. Potter, in your sales work do you sell over the counter to the people? A. No, sir; we are self-service.

Q. How is that? A. Self-service.

Q. Self-service? A. Yes, sir.

Q. Oh, I see. A. In other words, the customer comes in the store——

Q. Well, tell me this, if you can—I assume that you can—any customer in looking at an article that has a brand or

a label on it which you display for sale, the customer generally looks at the big label, the big language, doesn't he, on an ad instead of the little stuff on the back of it?

Mr. Sykes: Object to it as incompetent testimony for this witness.

Trial Examiner Furnas: Absolutely, the witness can testify on that point. Objection overruled. Exception granted.

A. Well, generally speaking, especially I deal more with women than I do men because they are the food buyers, but
773 women, if you have ever noticed—of course, you won't see it in just a general sales, waiting on over the counter, but you will see it in the self-service. They will take the can, they will go from one end of it to the other. The first thing they want to know is how much is in that can; how many will it service; whether it has sugar added or syrup or whether it is packed; what brand it is; whether it is a No. 1 or a high grade, and generally they look at everything.

Q. Now, going back to your answer to my first question, this branding and labeling suggesting the Red Cross to you, you made that statement because you saw the red cross on that; didn't you?

774 Mr. Sykes: He said——

Trial Examiner Furnas: Don't interrupt.

Mr. Sykes: If the Court please——

Trial Examiner Furnas: What is it? Don't discuss what the witness' testimony——

Mr. Sykes: If he proceeds to quote the testimony that is given——

Trial Examiner Furnas: So did you on cross examination.

Mr. Sykes: —he should have quoted accurately.

Trial Examiner Furnas: Proceed.

A. It does, yes.

Mr. Morgan: That is all.

Trial Examiner Furnas: Anything further?

Mr. Morgan: No, sir.

Trial Examiner Furnas: When a question is asked by either attorney, I hope that the other will respect the rights of that attorney enough not to interrupt until the question is answered.

Mr. Sykes: I regret that the Examiner takes that as an interruption. He having asked the question based upon prior testimony, if he misquotes the prior testimony, my duty is then and there, with the assistance of the Examiner, to have that corrected, and that 776
was my sole purpose, Mr. Examiner.

Trial Examiner Furnas: That can be handled—I don't like to have the witnesses interrupted while they are answering a question. You can object to it and move to strike it. Proceed. Anything further?

Mr. Morgan: Nothing further.

Trial Examiner Furnas: You are excused.

(Witness excused.)

Mr. Morgan: I will call my next witness.

Trial Examiner Furnas: Call your next witness.

777

MRS. FRANK J. ROSS, JR., was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Trial Examiner Furnas: Proceed.

Direct Examination by Mr. Morgan:

Q. You are Mrs. Frank J. Ross; is that right? A. Yes, sir.

Q. And do you live here in Lynchburg? A. Yes.

778 *Mrs. Frank J. Ross, Jr.—For the Commission—Direct*

Q. What is your address here, please, ma'am? A. 10 Lafayette Court Apartments.

Q. Are you a housewife or employed or both of them? A. Well, I have been a house—I am a housewife, but I have been working for the past two months.

Q. Where are you employed, ma'am? A. With the Selective Service.

Q. Selective Service? A. Yes, sir.

Q. Yes, ma'am.

Mr. Sykes: Is that a Government organization?

779

Q. Is that a Government organization? A. Yes; it is the local Draft Board.

Q. Local Draft Board. Of course. Local Draft Board; sure it is. I'll say it is Government. Mrs. Ross, do you know of the Red Cross Society? A. Do I know of it?

Q. Do you know of it? A. Yes, sir.

Q. Do you know what it is? A. Well, you mean what it is in the community, what it stands for?

Q. What it stands for, yes, ma'am. A. Well, I have a general idea. I don't know whether I can express it.

Q. Just in your own way, just like you want to. A. Well, I think it is something—it is an organization which is to

780 help people in a community.

Q. Do you know whether or not this Red Cross you refer to employs an emblem or a sign by which it is known? A. Well, yes, it has the red cross emblem.

Q. Any words that go with that emblem? A. No, sir; I don't.

Q. I show you an exhibit here, Mrs. Ross, Commission's Exhibit No. 10. I will get you to look that over in just your own way like you would buying anything in a store, and tell us what impression you have as to that product, what it is. A. Well, for two reasons I would think it was a good product; first, I see "Red Cross", and I know——

Mr. Sykes: See what?

The Witness: Red Cross.

Mr. Morgan: Red Cross.

A. And the second, "Approved by Good Housekeeping." And anything that I see that is approved by Good Housekeeping I usually think it is good.

Q. Now, your first answer there about a good product, what—— A. Well, I would think——

Trial Examiner Furnas: Let the witness finish.

Mr. Morgan: I am sorry. 782

A. Well, I would think that seeing the red cross on there just would mean that it was a good product, that evidently it was used probably by the Red Cross.

Q. Yes, ma'am. Would it be your idea, then, that this product was possibly put out with the approval of the Red Cross and sponsored by the Red Cross?

Mr. Sykes: Objected to as leading, if the Court please.

A. I would think——

Trial Examiner Furnas: Objection overruled. Exception granted. 783

By Mr. Morgan:

Q. Ma'am? Go ahead.

Mr. Sykes: What is the answer?

Trial Examiner Furnas: Go ahead and answer the question.

A. I would think that it was approved by the Red Cross, yes, sir.

Q. Yes, ma'am. Would you further have the view or would you not, in view of that red cross on there, that that product meets some sanitary standard of the Red Cross? A. Yes, sir, I would.

Mr. Morgan: That is all.

Trial Examiner Furnas: Cross examine.

Cross Examination by Mr. Sykes:

Q. Mrs. Ross, I take it that you are not familiar with this towel, paper towel, that has been presented to you? A. Well,
785 I have used it, yes, sir.

Q. Used the A. P. W. paper towel? A. I have used the Red Cross towel, yes.

Q. Yes. Did the A. P. W. Paper Company prepare it? A. Well, I don't know about that.

Q. And have you used a towel—— A. In fact, I have a roll in my kitchen right now.

Q. Yes. Have you used a towel which has the mark on it "A. P. W. Paper Company, Albany, New York"? A. Well, sir, I don't know about that. All I know is I have used the Red Cross towels. I buy these.

Q. Have you used any towel which said, "Trade Mark Registered United States Patent Office"? A. I am sorry; I
786 don't know because I don't recall.

Q. Well, did it have on it the words "Kitchen, bath, nursery, garage"? A. I am not that close an observer.

Q. Yes. And there is not on your towels any marks of "Approved, Good Housekeeping Institute"; is there? A. Yes; I remember that.

Q. When did you buy these? A. I don't remember. I bought some yesterday, but I didn't—I didn't read everything that was on the wrapper.

Q. But you did read this mark "Approved by the Good Housekeeping Institute"? A. I didn't read it yesterday, but I have read it on there.

Q. You are not sure that that is on there? A. Not sure of it.

Trial Examiner Furnas: Why—

Q. You are not sure that that appears on there? A. Well, yes.

Q. It appears on the one that you bought yesterday? A. No, sir; I am not sure about it appearing on the one yesterday.

Q. Well, all you mean, Madam, is that you see a red cross——

Trial Examiner Furnas: Well, now, wouldn't it be better to ask her what she means instead of telling her what she means? 788

Mr. Sykes: If the Court please, cross examination is cross examination.

Trial Examiner Furnas: It is, but it is not——

Mr. Sykes: My friend here puts in her mouth words——

Trial Examiner Furnas: Well, what are you trying to do?

Mr. Sykes: —on cross examination.

Trial Examiner Furnas: And what are you trying to do?

Mr. Sykes: I am trying to find out what the fact is—— 789

Trial Examiner Furnas: Just a minute.

Mr. Sykes: —as I am entitled to on cross examination.

Trial Examiner Furnas: I don't think you are entitled to do that, to put words in their mouths. Now, you can ask her the question and she can answer in her own way and you can develop that.

Proceed.

Mr. Sykes: Now, I will ask the question and the Examiner may rule upon it.

Trial Examiner Furnas: All right.

By Mr. Sykes:

Q. Does your testimony mean anything more than this: That you see upon this Exhibit 10 a trade-mark which is a red cross, and from that you raise the inference in your own mind, as you have testified, because of its being like the Red Cross mark that it is evidently used by the Red Cross? A. Yes, sir, I would think so.

Q. And that merely depends upon the fact that there is a red cross on there? A. It says "Red Cross Towels" on there.

791 Q. Well, is there any other——

Trial Examiner Furnas: Just a minute. Let her answer the question.

A. It says "Red Cross Towels" on there.

Q. And the use of the words "Red Cross Towels" and the red cross mark—— A. Yes.

Q. Is there any other matter on the paper which would induce you to say that it was evidently used by the Red Cross? A. No, sir, but I would think it was a good towel, because it is a Good Housekeeping approval.

Q. Wholly aside from the Good Housekeeping approval,
792 Madam, I don't suppose you are familiar with the fact that this is not on their signs as of the present day? A. Well. It has been on the ones I bought. As I said, the ones I bought yesterday I didn't notice because I didn't look at it that close.

Q. Now, when you say that you have the impression that it is approved by the Red Cross, what do you mean by that? A. Well, I think they use the very best, the very purest or most sanitary products and bandages and towels and napkins and anything they use. I think they use the most sanitary and a good product.

Q. And you think that the American Red Cross approves sanitary products; is that right? A. I think they use them.

Q. Yes. Your impression is that the American Red Cross is interested in sanitation? A. Yes, sir, I do.

Q. And I will leave it to my friend to establish that they are not.

Now, you say that there is a suggestion to your mind that this meets some sanitary standard. Do you mean that the American Red Cross Society lays down a standard for paper towels? A. No, sir, but I think they would investigate the towel they use quicker than I would. I think they would have 794 some choice in the matter.

Q. Yes. You see this sign used on other products except the towels shown you today? A. Well, do you mean in products that I buy or——

Q. Yes, that you buy, Madam. A. Well, that is the only thing that comes to my mind. I have worn Red Cross shoes.

Q. Oh, you are familiar with the red cross that is used with the Red Cross shoes; are you not? A. I have worn the Red Cross shoe.

Q. Yes, and that has a red cross sign; hasn't it? A. I don't know. It has been several years since I have worn a pair. 795

Q. It has the words "Red Cross"? A. Yes, sir.

Q. Do you associate that with the Red Cross Society? A. Well, I never thought about it. I just thought it was a brand of shoes——

Q. A brand of shoes? A. —that was a good shoe.

Q. Yes. Do you use any bandages or—— A. Yes, sir.

Q. —any absorbent cotton—— A. Yes, sir.

Q. —from time to time? Or any Band-Aid—— A. Yes, sir.

Q. —when you hurt your finger? A. Yes, sir.

Q. I thought I observed it. Did you ever see the red cross mark used in connection with those products? A. Yes, sir.

Q. What? A. Yes, sir.

Mr. Sykes: Did she say "yes" or "no"?

The Reporter: "Yes."

Trial Examiner Furnas: "Yes."

By Mr. Morgan:

797 Q. Did you associate that mark with the American Red Cross Society? A. I think it is the type bandage they use.

Mr. Morgan: "They"—you mean the Red Cross?

The Witness: The Red Cross.

By Mr. Sykes:

Q. You mean the Red Cross Society uses that particular bandage? A. Well, I—yes, sir.

Q. Where did you get that impression? A. Because it has the Red Cross emblem on it.

Q. Because it has the red cross sign on it? A. Yes, sir.

Q. No other reason beside that? A. Well, a bandage—

798 I don't know just hardly how to answer you there. I just use a First Aid bandage because I know it meets their standards and requirements.

Trial Examiner Furnas: When you say "they" now——

The Witness: The Red Cross.

Trial Examiner Furnas: Just a minute. Just a minute, Mr. Attorney.

(An interruption occurred.)

Trial Examiner Furnas: Proceed.

By Mr. Sykes:

Q. Now, the store which you buy these towels from is one that you trade with regularly? A. Well, yes, sir. There are times that I buy things from other stores.

Q. That particular store, does it have any other kind of towels besides these Red Cross towels with the trade-mark "Registered United States Patent Office"? A. Yes, sir.

Q. And with this sign, "A. P. W. Paper Company" on it? A. I don't know, sir.

Q. You didn't inquire as to whether that was the only type of towel that they had or not? A. What do you mean, 800 the store that I patronize?

Q. Yes; the store that you patronize. A. Well, they handle two or three other kinds of towels. I have used the different towels.

Q. Handle two or three different kinds of paper towels? A. Yes, sir. Sometimes I use one and then I get another.

Q. Sometimes you use the Scott Tissue, Scott Towel? A. I believe sometimes it is the Great North—the Great Northern tissue towels—rather, paper towels.

Q. You buy these towels because you like them; is that it? A. Yes, sir.

801

Mr. Sykes: All right.

Mr. Morgan: No questions.

Trial Examiner Furnas: Anything further?

Mr. Morgan: No, sir.

Trial Examiner Furnas: Anything further?

Mr. Morgan: No. No questions.

Trial Examiner Furnas: You are excused, Mrs. Ross. Thank you for coming in.

(Witness excused.)

Mrs. Judson S. Fielder was thereupon called as a witness for the Commission, and having been first duly sworn, testified as follows:

Direct Examination by Mr. Morgan.

Q. You are Mrs. Judson S. Fielder? A. Yes.

Q. Do you live here in Lynchburg, Mrs. Fielder? A. I do.

Q. Where do you live? A. Fort Avenue.

Q. Fort Avenue? A. Yes.

Q. Fort, Fort? A. That is right.

Q. Any number? A. 3522 Fort.

Q. 3522 Fort? A. Yes.

Q. Have in Lynchburg? A. Yes.

Q. Yes, ma'am. Are you a housewife, keep house? A. Housewife, yes.

Q. Mrs. Fielder, do you know of the Red Cross, the American Red Cross? A. Know of it?

Q. Yes, ma'am. A. Just in a general way.

Q. What do you know it to be, the Red Cross, just in a general way? Just tell us. A. The Red Cross? Well, I am sort of an amateur about answering questions. I think it is an organization, isn't it, for assisting any one in distress, I imagine.

Q. Yes, ma'am. A. Any one.

Q. This Red Cross that—the organization which you say assists people in distress, does it use a sign or an emblem by which it is known? A. Do I know what?

Q. Does it use a sign or an emblem, anything by which it is known? A. A red cross.

Q. A red cross? A. Yes.

Q. Yes, ma'am. Mrs. Fielder, I show you what we call Commission's Exhibit No. 8 in the case and will get you to look that over like you would if you were going to buy it or were thinking of buying it.

Q. You wouldn't know about that? A. No, I wouldn't know.

Q. Would you say that the labeling or branding on that product would indicate to you that the Red Cross had anything to do with it? A. I couldn't tell you. I don't understand whether it would or not.

Mr. Morgan: That is all.

Trial Examiner Furnas: Cross examine.

Mr. Sykes: No cross examination, if the Examiner please.

809 Trial Examiner Furnas: You are excused. Call your next witness. Thank you very much for coming up.

(Witness excused.)

Trial Examiner Furnas: Five minutes' recess

(A short recess was taken.)

Trial Examiner Furnas: Mr. Reporter, you will note that the recess is ended.

What is your further pleasure?

Mr. Morgan: Are you ready to proceed, your Honor?

Trial Examiner Furnas: Are you ready to pro-

810 ceed?

Mr. Morgan: Yes, your Honor.

Call Mrs. Robert M. Stump as the next witness.

MRS. ROBERT M. STUMP was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Trial Examiner Furnas: Proceed.

Direct Examination by Mr. Morgan:

Q. You are Mrs. Robert M. Stump? A. Yes.

Q. And you live here in Lynchburg? A. Uh-huh.

Q. What is your home address here, please, Mrs. Stump? 811
A. 3650 Fort Avenue.

Q. 3650 Fort Avenue; is that right? A. Yes.

Q. You are a housewife, I take it? A. Yes.

Q. Yes, ma'am. Mrs. Stump, do you know of the American Red Cross generally as the Red Cross? A. Uh-huh.

Mr. Sykes: I would suggest to the Examiner that the witness should be instructed to say "yes" and not to nod because the stenographer cannot take nods.

A. Well, I do. I mean I know what the Red Cross is. 812

Q. Just in your own words, just tell us very briefly what the Red Cross is to you, what it means to you, what it is. A. It is a charity organization. That is all I can say that it is.

Q. Yes, ma'am. This Red Cross, this charity organization, does it employ a sign or an emblem by which it is known? A. Yes.

Q. What is that? A. Red cross.

Q. Red cross. Yes, ma'am. Any word or words that go with that cross? A. I don't know what you mean. I don't know of any.

Q. Mrs. Stump, I will get you to look at this package here which we designate as Commission's Exhibit 10. Just 813
take it and look it over like it was something you might buy or wanted to buy, or were thinking about buying. Disregard any writing on it. A. What——

Q. Now, what is your impression as to what that product is, what it is? A. Well, just glancing at it, I mean you would think that it would be connected with the Red Cross, the organization.

Q. The product would be connected with the Red Cross organization? A. Uh-huh.

Q. And you say that, do you, by reason of the labeling you find on it? A. Just the label.

Q. Yes, ma'am. Would you say or would you not say that that red cross label on there also would have anything to do with any standard set by the Red Cross for a product like that? A. You mean do I think the Red Cross puts out this paper? Is that what you mean?

Q. No, do you think there is any Red Cross standard for that product? A. Well, I don't know.

Q. You wouldn't know about that. I mean for a requirement, a standard for a sanitary requirement. A. Uh-huh.

Q. Ma'am? A. Well, just looking at that, that is the impression you get. I mean I would. I have never used this
815 product.

Q. You mean you have the impression that it meets a sanitary requirement of the Red Cross? Is that what you are trying to say? A. Uh-huh.

Mr. Morgan: She has nodded her head.

Trial Examiner Furnas: I understood the witness to say "yes" too.

The witness: I did.

Mr. Morgan: I didn't get that. I am sorry.

That is all.

Trial Examiner Furnas: Cross examine.

816 *Cross Examination by Mr. Sykes:*

Q. I assume, Mrs. Stump, that you have not purchased this product at any time? A. No, I haven't.

Q. It has never been presented to you for you to buy? You have never considered buying it at any time? A. No, I haven't.

Q. You haven't even seen advertising about it? A. I have seen it in the grocery store——

Q. Just seen it in the grocery store? A. —with the red cross.

Q. With the red cross. But you have never been asked to buy it at any time? A. Some man came to my house about

a year ago, I believe, and he was asking me some questions about it, but he wasn't selling it.

Q. He wasn't. What questions did he ask you? A. I don't remember, it has been so long ago, but I believe he asked me if I got the impression that this was put out by the Red Cross organization, and I told him I thought so.

Q. Did you read the front of that cover, see the words "Red Cross towels"? A. Uh-huh.

Q. See the words "Trade-Mark United States Patent Office?" A. Yes.

Q. That conveys to you the idea that that is a trade-mark; 818
does it not? A. Well, I am—just really hadn't thought much about it. I don't—don't use these kind of towels.

Q. Does it now, having read the words, convey to you the impression that that is a trade-mark—— A. Yes, that is what it says.

Q. —which has been issued by the United States Patent Office? A. And is there anything on the front of that to show by whom it is made? A. This paper company.

Q. A. P. W. Paper Company of Albany, New York? A. Yes.

Q. Yes. And the A. P. W. Paper Company is on the back of it; is it not? A. Uh-huh. 819

Q. Are you under the impression, Madam, that the American Red Cross Company is engaged in trade and business? A. I said that, just looking at the paper—that I had never used the product, but just looking at it that is the impression you would get, but I have never read real closely the writing on that. I don't know anything about it.

Q. I am asking you if you are under the impression that the American Red Cross Society is engaged itself in trade or business. A. I am not now, but I just didn't know whether they put those towels out or not.

820 *Mrs. Robert M. Stump—For the Commission—Cross*

Q. Forgetting for a moment this exhibit which has been shown you, I am asking you about the Red Cross Society itself. A. Yes.

Q. Are you under the impression that that American Red Cross Society is engaged in trade or business? A. No, it isn't.

Q. Are you under the impression that this product is manufactured by the American Red Cross Society? A. I just said that I didn't know, but just glancing at the paper you would think that they were in some way connected with it by the emblem on it.

821 Q. Manufacturing it? A. Yes.

Q. Have you observed this same mark on other products, Madam? A. That and the tissue is the only ones I have ever noticed it on.

Q. Yes. Have you purchased this tissue? A. No, I haven't.

Q. The fact that it had an American Red Cross sign which you interpreted to mean the American Red Cross had some connection, some interest in it, didn't induce you to purchase the article? A. No.

Q. No. A. I had one brand that I had been using, so I just kept on.

822 Q. Yes. Are you familiar with the Red Cross shoe? A. No, I don't believe so.

Q. You have seen their advertising; haven't you? A. (The witness nodded her head.)

Trial Examiner Furnas: The witness nods her head.

Q. You have seen—— A. I have just heard of it. I have never used it.

Q. No. But you have seen the words "Red Cross" used in connection with shoes; haven't you? A. I don't know that I have ever noticed it; just the name is familiar.

Q. Well, when you suffer some injury to your hands in the course of your housework, you occasionally use a "Band Aid"; do you not? A. Yes.

Q. Is there a red cross used in connection with that product? A. I really don't recall whether it is or not.

Q. Do you use absorbent cotton sometimes from time to time in your household? A. Yes.

Q. And on the packages of absorbent cotton are there any red cross marks? A. I don't use that kind.

Q. You have seen it, however? You have seen the product using a red cross mark on the package? A. I believe so. 824

Q. Were you under the impression that the American Red Cross Society was connected with the company making that product? A. I hadn't—just really hadn't thought about it because, as I said before, I don't use any of these products.

Q. Well, how is it you thought about this particular product and you didn't think of the others? A. The only place I had seen this was in the grocery store.

Q. I see. And the fact that you had seen it in the grocery store did not have anything to do with your thought that the American Red Cross Society had some connection with this; did it? A. No. The only thing I said, just glancing at the emblem would remind you of the American Red Cross 825 organization.

Q. Having the same mark, it would remind you of it? A. Yes, that is right.

Q. I am stepping beyond that, Madam. Assuming that you are reminded of the American Red Cross by the fact——

Trial Examiner Furnas: I beg your pardon, I didn't understand your question.

By Mr. Sykes:

Q. I said, assuming that you are reminded of the Red Cross by seeing a sign or a trade-mark containing a red cross, going to the next step, how do you move from that

to an assumption that the American Red Cross Society, a charitable institution, is interested in a commercial product like this? A. Well, I just didn't think about it that much. I just—in glancing—I mean in passing where this is stocked in a store,-I just happened to notice the red cross, and that is all I noticed about it.

Q. That is all? A. And it just brought to my mind the Red Cross organization.

Q. Is that all that you have to say? A. That is all that I have to say about it because I really don't know anything more about it.

827 Q. But you have said that you thought in some way there was some sanitary requirement of the American Red Cross that was met by this product; have you not? A. Well, not using it, I couldn't very well say. I have never used any article with that trade-mark on it.

Q. You haven't. Are you under the impression that the American Red Cross Society lays down standards for sanitary purposes? A. No; I just don't know that much about it, about the organization.

Q. Not knowing that much about it; how do you reach the impression that this is manufactured under the sanitary requirements of the Red Cross? A. All that I was interested in was the emblem on it.

828 Q. Yes? A. I don't know anything about the sanitary conditions or anything about the paper.

Q. Then you are not prepared to say that you were under the impression that there was a standard of sanitary requirements laid down by the Red Cross—— A. No.

Q. —so far as you know? A. It brought to my mind the organization when you see that red cross.

Q. Yes. A. That is what I said.

Q. Yes. And if you had stated that you had an impression that the sanitary requirements of the American Red Cross were fulfilled by these towels, you want to withdraw

that statement do you not? A. Well, knowing that the organization doesn't have anything to do with it I don't see why it would be necessary to say anything.

Q. Madam, it isn't necessary to say anything but you have said something. If I understand your testimony—and my friend here who is keen and alert will correct me if I am in error—you testified, in response to a leading question, that you were under the impression that the sanitary requirements of the American Red Cross were met by these towels. Now, do you want to change your testimony in that respect? A. Well, I guess I had better, because I don't know anything about the sanitary requirements. 830

Q. Yes. And you did not have any impression of that sort? A. The only impression I had was glancing at that emblem on the paper would remind you of the Red Cross.

Q. And the sole connection between the American Red Cross Society and this particular article of commerce——

A. Is the emblem on it.

Q. Emblem on it? A. Uh-huh.

Q. And that is so of the toilet tissue, Exhibit 8, which, I believe, you have examined?

Mr. Sykes: Has the witness examined it?

Trial Examiner Furnas: I think not.

Mr. Morgan: I don't think she has seen that. 831

By Mr. Sykes:

Q. That is true of the toilet tissue, Exhibit 8,——

A. Uh-huh.

Q. —is it not? A. Yes, that is all, just the Red Cross.

Q. Yes. Now, you haven't any impression that the American Red Cross Society is connected in any way with a paper company manufacturing toilet tissue, have you? A. Well, the same way with the napkins. I did think before now that they might have become connected in some way with it just

on account of some emblem that they used, the paper company. I never heard of this paper company.

Mr. Sykes: All right.

Trial Examiner Furnas: Anything further?

Mr. Morgan: Just one question there.

Redirect Examination by Mr. Morgan:

Q. In regard to what the Judge here has asked you about the sanitary standards for that product——

833 Mr. Sykes: I don't know to whom he is referring, if the Examiner please.

Mr. Morgan: Counsel for the Respondent.

Trial Examiner Furnas: A compliment.

Mr. Sykes: I thought he was referring to you. Excuse me.

Trial Examiner Furnas: Proceed.

By Mr. Morgan:

Q. If you have had the impression that that product—if you had—first, I will say if you had the impression before Judge Sykes asked you those questions, that that product indicated to you a Red Cross standard of sanitation—
834 I say if you had that impression first and you do not now have it after having had the trade-mark pointed out to you by Judge Sykes, if you were misled in that way it was because of that big red cross; wasn't it? A. Yes.

Mr. Sykes: I object to the "if's" if the Court please.

Trial Examiner Furnas: Well, the question is leading. There is no question about that, but——

Mr. Sykes: My objection is not on the ground it is leading, but the question has, I think, too many subjunctives in it, "if certain things occurred" and there is no evidence that those things had happened.

Trial Examiner Furnas: I think, if I understood the question, it was if the witness, before she came to the witness stand here or while she was testifying——

Mr. Morgan: At first.

Trial Examiner Furnas: At first was under the impression that it might be in some way or other on account of the sign connected with the Red Cross Society, but your question, as I understand it, to the witness now is if after the explanations by counsel for the Respondent she entertains a different view, she has a right to say so; isn't that it? 836

Mr. Morgan: I will modify that in this way: My questions are restricted to the aspect of a Red Cross standard of sanitation concerning which Judge Sykes interrogated the witness at some length and called her attention to the trade-mark, and so forth.

Trial Examiner Furnas: Now, just state your question again to the witness. I think we don't—I am not clear on it. Are you?

Mr. Sykes: I am clear that if there is a lot of "ifs" they have got to lay the foundation for the "ifs" and make them into facts.

Trial Examiner Furnas: I am not going to require him or you or any one else to lay a foundation. This isn't a trial before a jury, and anything that will enable the Commission to get an idea of what is in her mind, I am going to let her testify to it. 837

Mr. Morgan: I will shorten the question.

Trial Examiner Furnas: What?

Mr. Morgan: I will shorten it.

Trial Examiner Furnas: All right.

By Mr. Morgan:

Q. Mrs. Stump put it this way: If you were under the impression that that product would conform to any Red

Cross-sanitary standard, you got that impression by reason of the red cross on there; didn't you?

Mr. Sykes: I object. The same objection.

Trial Examiner Furnas: No. Objection overruled.

A. I don't know anything about the sanitation that would be—I mean the Red Cross. The only thing I said about this paper at all was just the emblem. That was the only thing that I noticed, and I don't know anything about the sanitation connected with the Red Cross.

839

Mr. Morgan: That is all at this time.

Trial Examiner Furnas: All right. Anything further?

Mr. Sykes: Oh, we can allow Mrs. Stump to go.

Trial Examiner Furnas: You are excused. Thank you very much for coming in.

(Witness excused.)

Trial Examiner Furnas: Call your next witness.

Mr. Morgan: The next witness was a Mrs. Gorrell, who was to have been here at 3 o'clock.

Trial Examiner Furnas: There are some ladies sitting back there.

840

Mr. Morgan: No; she is not among them. Mrs. Gorrell can't come. She was excused by the Commission on request.

Trial Examiner Furnas: All right. We will have a five-minute recess.

(A short recess was taken.)

Trial Examiner Furnas: On the record. Are you ready for your witness to be sworn?

Mr. Morgan: Yes, your Honor.

MRS. WILLIAM D. STOREY was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Morgan:

Q. You are Mrs. William D. Storey? A. Yes.

Q. You live here in Lynchburg? A. Yes.

Q. Yes, ma'am. Are you in business here?

Mr. Sykes: May we suggest that the witness raise her voice? 842

Q. Yes. Speak just a little bit louder. A. I don't run a business, but I work.

Q. Oh, you work? A. Yes.

Q. Where are you employed, ma'am? A. C. B. Cone's Overall Company.

Q. And your residence address here is what? A. Is 208 McWayne Circle.

Q. 208 McLane Circle? A. McWayne Circle.

Q. McWayne Circle. W-a-y-n-e? A. Yes.

Q. Mrs. Storey, did you ever hear of the American Red Cross? A. Yes, sir.

Q. What do you know it to be, the Red Cross? A. Well, I just thought it was to help people in need. I— 843

Q. This Red Cross that helps people in need, do you know of any sign or emblem by which it is known? A. Red Cross is all I know.

Q. Yes, ma'am. I will show you a package here, what we call Commission's Exhibit No. 10, and get you to look it over just like you would if you were going into a store thinking about buying it—disregard any writing on it—and give us your impression as to what that article is. A. Paper towels.

Q. Will you tell us, please, whether or not, from the binding and labeling you find on that package, Commission's Ex-

hibit 10, you think that the Red Cross has approved the product. A. I never had thought of it; had no idea.

Q. Would you have an idea as to whether, from that branding or labeling, it might indicate a Red Cross standard, sanitary standard? A. I never—wouldn't have any idea.

Q. Would not have any idea.

Mr. Morgan: That is all.

Trial Examiner Furnas: Cross examine.

Mr. Sykes: I have no cross examination of Mrs. Storey.

845 Trial Examiner Furnas: All right. You are excused.

(Witness excused.)

Trial Examiner Furnas: Call your next witness.

Mr. Morgan: Miss Bertie L. Tompkins. She was excused. She was to be here at 3:30. We had two that were to be here at this session that were excused by the Commission.

Trial Examiner Furnas: That is all you have for today then?

Mr. Morgan: No; I have one more witness.

Mr. Sykes: Mr. Examiner, I observe that the gen-
846 eral nature of this testimony is constant. There is no suggestion from beginning to end of this matter that the A. P. W. Paper Company has made any misrepresentations which are false in any nature or form whatsoever, and that anybody has relied on it. As a matter of fact, there isn't any evidence getting into this record as I have observed that anybody has relied on anything. We are engaged in getting a series of flash opinions from people who did not purchase this product.

Trial Examiner Furnas: Now, just a minute. What are you leading up to now? I think I can help this matter out just a little.

Mr. Sykes: What I am leading up to is I don't see that we are helped or you are helped or the Commission is helped by piling up a lot of opinions of people whom they have finally induced to come in here and testify that they have an opinion that, seeing a red cross leads them to believe all sorts of things.

Trial Examiner Furnas: All right. We will go off the record and discuss that. It is not necessary that it be on the record now. Later on we may put it on the record.

Mr. Sykes: Yes. 848

(Discussion off the record.)

Trial Examiner Furnas: Mr. Reporter, you will note a ten-minute recess.

(A short recess was taken.)

Trial Examiner Furnas: Are you ready, gentlemen?

Mr. Morgan: Yes, we are ready, your Honor.

Trial Examiner Furnas: Mr. Reporter, on the record.

849

MRS. HERBERT J. GARRETT was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Trial Examiner Furnas: Proceed

Direct Examination by Mr. Morgan:

Q. You are Mrs. Herbert J. Garrett? A. Yes, sir.

Q. You spell your name G-a-r-r-e-t-t? A. Yes, sir.

Trial Examiner Furnas: If the witness please, will you just raise your voice? It is hard to hear in here.

The Witness: All right.

Q. You live here in Lynchburg, Mrs. Garrett? A. Yes, sir.

Q. Where is your address? What is your address? A. 3610 Fort Avenue.

Q. 3610 Fort Avenue? A. Yes, sir.

Q. Lynchburg, Virginia? A. Yes, sir.

Q. Are you a housewife, Mrs. Garrett? A. Yes, sir.

851 Q. Yes, ma'am. Mrs. Garrett, have you heard of the American Red Cross? A. Yes, sir.

Q. Just briefly, in your own way, what does the American Red Cross mean to you? What do you understand it to be?

Mr. Sykes: You refer to the Red Cross Society, the association, and not the mark, I suppose?

The Witness: Uh-huh.

Mr. Morgan: Wait a minute. I will get to the mark.

The Witness: Well, it is an organization for the help of people that need.

852 *By Mr. Morgan:*

Q. Does this organization that helps people that need—do you know whether it uses a sign or an emblem by which it is known? A. Yes; it uses the red cross.

Q. The Red Cross. That is the sign or emblem by which it is known? A. Yes.

Q. Yes, ma'am. Mrs. Garrett, I show you Commission's exhibit No. 10, and will get you to look at that; disregard any of the writing you might find on it. Look at it just like you were going to buy it in a store or were thinking about buying it. Look it over and then tell us what——

Mr. Sykes: Both sides, did you say?

Mr. Morgan: Just let her look it over like she was going to buy it.

Trial Examiner Furnas: Like she was going to buy it.

Mr. Morgan: Let her buy it.

By Mr. Morgan:

Q. Now, having looked it over, tell us what your impression is as to that product, what it is, and so forth. A. Well, it is paper towels. 854

Q. That is correct.

Mr. Sykes: It says so. (Laughter)

A. It is approved by Good Housekeeping.

Q. I will ask you whether, going a little further, the branding and labeling you find on that package would indicate to you any suggestion or connection with the Red Cross Society. A. No.

Q. Ma'am? A. No, it wouldn't to me.

Q. It would not to you. I will ask you whether or not the Red Cross appearing on that product would have any suggestion of a Red Cross sanitary standard for the product. A. Yes, it might—might mean a higher standard. 855

Q. Might mean a higher standard? A. Of purity, and so on.

Mr. Morgan: That is all.

Trial Examiner Furnas: Cross examine.

Cross Examination by Mr. Sykes:

Q. Mrs. Garrett, I assume that you haven't bought his product at any time in the market; have you? A. No, I never have.

Q. And you haven't bought any of the—— A. No; I have never used it.

Q. —toilet tissue which is manufactured by the A. P. W. Paper Company? A. No, I never have.

Q. You observed in your examination—I think you only examined one side of the product—that it was a product which was made by the A. P. W. Paper Company of Albany New York; did you not? A. Yes.

Q. It has got its mark and also this is a registered trade mark of that paper company; you observed that, didn't you? A. Yes.

857 Q. You are a member of the Red Cross; are you? A. Yes.

Q. Madam, are you under the impression that the American Red Cross Society has a standard which it lays down? A. Well——

Q. Just listen. —which it lays down for products which are made by domestic manufacturers and sold on the market? A. No, I don't imagine the Red Cross has anything to do with this.

Q. You didn't think for a moment that the Red Cross has any standard for towels? A. No, I didn't think that.

Q. Or for toilet tissue? A. No, I didn't imagine they do, not as I know of.

858

Mr. Sykes: That is all, Mr. Morgan.

Trial Examiner Farnas: Anything further?

Redirect Examination by Mr. Morgan:

Q. Won't you clarify what you said to me just now on recent examination about this emblem might mean a Red Cross standard of higher purity? What did you mean by that, ma'am? A. Well, it might mean a better towel.

Q. Because the red cross is on it, you mean? A. Well, it could be purer paper. It might have something to do with

it. It might mean that—I don't know whether anybody would buy it from that standpoint or not.

Mr. Morgan: That is all.

Recross Examination by Mr. Sykes:

Q. Would you buy it from that standpoint? A. No, I wouldn't.

Mr. Sykes: I move to strike out the testimony because she is talking about the effect on other people, not on herself. 860

Trial Examiner Furnas: No. It will stand. Motion denied.

Mr. Sykes: An exception.

Trial Examiner Furnas: Anything further?

Mr. Morgan: That is all.

Trial Examiner Furnas: You are excused.

Mr. Sykes: Thank you, Mrs. Garrett.

(Witness excused.)

Trial Examiner Furnas: We will have a short recess.

(A short recess was taken.)

Trial Examiner Furnas: On the record. Mr. Reporter, you will note that the recess has ended.

I understand that counsel for the Commission and also counsel for the Respondent both have a statement that they would like to make at this time. I will call on counsel for the Commission to make the first statement, and then that statement will be followed by counsel for the Respondent.

What have you to say, Mr. Attorney?

Mr. Morgan: If your Honor please, Judge Sykes and I have conferred informally, and I think we have

agreed on a stipulation by virtue of which we may be able to terminate these hearings at this time.

Trial Examiner Furnas: All right. Now, do you want to make this stipulation a part of the record?

Mr. Morgan. Yes, sir.

Trial Examiner Furnas: All right. Read your stipulation as you have it for the record.

Mr. Morgan: Well, do you want to put two forms on the record, two forms of stipulation?

Trial Examiner Furnas: Off the record a minute.

863 (Discussion off the record.)

Trial Examiner Furnas: On the record.

Mr. Sykes: The attorney for the Commission represents that it is the intention of the Commission to subpoena twenty-five more witnesses in this proceeding in Lynchburg, Charlottesville, Richmond and Fredericksburg. Thereupon, it is stipulated by and between Mr. Morgan, as counsel for the Commission, and Mr. Sykes, as counsel for the Respondent, that said witnesses, if called, would give testimony of the same general character and to the same general effect as the witnesses heretofore called in the Cities of Wilmington, Delaware, Baltimore, Maryland, Staunton, Virginia, and Lynchburg, Virginia, have testified in this proceeding, and Respondent by this stipulation

864 does not admit the accuracy or the veracity of the witnesses concerning which this stipulation is made.

Trial Examiner Furnas: Have you agreed, gentlemen, on a stipulation?

Mr. Sykes: Now, will you read that thing as a whole?

Trial Examiner Furnas: Read that over now.

(Stipulation read by reporter.)

865

Trial Examiner Furnas: Gentlemen, have you agreed on a stipulation?

Mr. Morgan: We have, your Honor.

Mr. Sykes: We have, your Honor.

Trial Examiner Furnas: Is the stipulation as read and recorded by the reporter the stipulation that you both have agreed on?

Mr. Morgan: It is.

Mr. Sykes: Both agreed on it, sir.

Trial Examiner Furnas: It is so ordered.

Gentlemen, what is your further pleasure?

866

Mr. Morgan: I now move, your Honor, that we adjourn the hearing in this matter to convene in Washington, at 10 o'clock on the morning of June 30.

Trial Examiner Furnas: Now, just a minute. Off the record.

(Discussion off the record.)

Trial Examiner Furnas: Mr. Reporter, you will note that when this hearing adjourns it will adjourn to reconvene in Washington, D. C., June 30, 1942, at 10 a. m. The convening will be in the hearing room of the Federal Trade Commission Building.

867

You will note that the hearing is now adjourned at 4:15 p. m.

The hearing is now adjourned.

(Whereupon, at 4:15 o'clock p. m., June 19, 1942, the hearing was adjourned.)

868 **Transcript of Hearing, Dated June 30th, 1942, Washington, D. C.**

BEFORE THE

FEDERAL TRADE COMMISSION

Docket No. 4747

In the Matter

of

869 A. P. W. PAPER COMPANY, INC.,
a corporation

Room 388, Federal Trade Commission Building,
Washington, D. C.,

June 30, 1942.

Met, pursuant to adjournment at 10 a. m.

Before:
MILES FURNAS, Trial Examiner.

870 Appearances:

MARSHALL MORGAN, Esq., appearing for the Federal Trade Commission.

EMERY H. SYKES, Esq. (Sullivan & Cromwell, 48 Wall Street, New York, N. Y.), appearing for the Respondent.

PROCEEDINGS

Trial Examiner Furnas: Gentlemen, are you ready to proceed?

Mr. Morgan: Wait just a second, your Honor. (After a pause) Yes, we are ready, your Honor.

Trial Examiner Furnas: Mr. Reporter, you will note that this is a reconvening by agreement and notice of the hearing in Docket No. 4747, at 10 o'clock a. m., in Room 388 in the Federal Trade Commission Building, Washington, D. C., Federal Trade Commission versus A. P. W. Paper Company.

The last hearing was held at Lynchburg, Virginia, on the 19th day of June, 1942. You will note, Mr. Reporter, that counsel for the Commission and counsel for the Respondent are present.

872 The same decorum will be exercised by those in attendance at this proceeding as is exercised in the United States District Courts.

There will be no smoking or unnecessary talking in this room during these proceedings.

You are also advised, Mr. Reporter, that everything transpiring here will be on the record unless otherwise ordered by the Trial Examiner. Any one desiring to make a statement off the record must first request permission of the Trial Examiner to do so.

We will now proceed with the hearing. What is your further pleasure, gentlemen?

873 Mr. Morgan: If your Honor please, I would like to call Mr. H. J. Hughes, of the American Red Cross, as the Commission's first witness.

Trial Examiner Furnas: Off the record.

(A discussion was had off the record.)

Trial Examiner Furnas: On the record.

Are you ready for your witness to be sworn?

Mr. Morgan: Yes, your Honor.

H. J. HUGHES was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

874 *H. J. Hughes—For the Commission—Direct*

Direct Examination by Mr. Morgan:

Q. You are Mr. H. J. Hughes? A. Yes, sir.

Q. You live here in Washington, Mr. Hughes? A. Baltimore, Maryland.

Q. Baltimore, Maryland. I will ask you what is your profession or occupation? A. I am an attorney.

Q. Attorney. Do you have any special connection as—— A. I am the General Counsel of the American Red Cross.

Q. For how long have you been General Counsel of the American Red Cross, Mr. Hughes? A. Well, my connec-
875 tion with the organization, which has been a continuous one, started in 1918, and I have been for some 21 years—24 years—excuse me—either legal advisor or general counsel. The title has been changed, but I have served in that capacity continuously for approximately 24 years.

Q. Yes, sir. In connection with your duties as general counsel and legal advisor, have you been in close contact or attached to the executive and administrative offices of the Red Cross—— A. I have, sir.

Q. —during those years? A. Yes, sir.

Q. Have you had daily contacts with the various problems that arise in connection with the functioning—— A. I have sir.

876 Q. —of the Red Cross? Have you in connection with your duties made visits to the various Chapters and branches of the organization throughout the country? A. I have traveled all over the United States on behalf of the organization, attending national conventions, regional conferences, and making Chapter visits.

Q. Throughout that period of years? A. Yes, sir.

Q. I will ask you, Mr. Hughes, whether, in connection with your official duties, you had anything to do with matters involving the protection of the name and emblem of the American Red Cross. A. That work has been under my exclusive jurisdiction. All the files on the subject, until re-

cent years, were maintained in my office, which is a practice not generally followed with our files in the organization, and all matters affecting the use of the Red Cross name and emblem come to me and are handled by me.

Q. In other words, as I understand you, that has really been your principal job? A. That is one of the two or three principal jobs which I handle.

Q. At this time I want to ask you some questions regarding the manner in which the Red Cross functions and has functioned. I will ask you whether a so-called——

Mr. Sykes: All this is subject to my objection. It is irrelevant and incompetent, all this line of testimony, as to the weight of the Red Cross functions. 878

Trial Examiner Furnas: In other words, you wish the objection that you made on former occasions at the hearing to be continued, then, through this hearing?

Mr. Sykes: This is a different line, so I make a new objection.

Trial Examiner Furnas: Yes; with the same understanding that the objection is overruled and exception granted to this line of testimony up to date, up to the present time? 879

Mr. Sykes: Yes.

Trial Examiner Furnas: All right. Proceed.

Mr. Morgan: And this new line of testimony?

Mr. Sykes: And this new line.

Trial Examiner Furnas: Proceed.

Mr. Morgan: All right, your Honor.

By Mr. Morgan:

Q. I will ask you, Mr. Hughes, whether a so-called governing body has been established by the American Red Cross. A. The charter provides for the establishment of a central committee, which is the governing body of the organization.

880 *H. J. Hughes—For the Commission—Direct*

Q. Now, you say "the charter provides". I will ask you further in that connection, in carrying out the terms of the charter have——

Trial Examiner Furnas: What? I did not understand your question.

Q. I say: I will ask you further, in that connection, in carrying out the charter, whether or not that governing body has been established and is functioning. A. It has been established and is functioning.

881 Q. What is the name of that governing body? What do you call it? A. It is called the Central Committee.

Q. I will ask you how that committee is constituted, Mr. Hughes. A. The Central Committee consists of 18 members. Six of those members are appointed by the President of the United States. Six are elected by a self-perpetuating board known as the Board of Incorporators, and six are elected by delegates from our Chapters throughout the United States.

Q. I will ask you whether the President of the United States has designated any member of the Central Committee as Chairman. A. He does designate one member of the Central Committee as its Chairman.

882 Q. I will ask you, has the President named and does the President name one member to the Central Committee respectively from the Departments of State, War, Navy, Treasury and Justice? A. He does, sir.

Q. These members of the Central Committee appointed by the President of the United States, they serve how long, Mr. Hughes? A. They serve until their successors are designated by the President.

Q. I will ask you whether the President of the United States fills any vacancy occurring in the chairmanship for the Central Committee. A. He has the exclusive right to fill all vacancies.

Q. Does the President fill any vacancy occurring in the case of any committeeman that has been named by him? A. All of those vacancies from the six—the group of six which are designated by the President are filled by the President whenever a vacancy occurs.

Q. Mr. Hughes, does the Red Cross hold annual meetings? A. We do hold an annual meeting.

Q. When are they held, sir? A. Well, it is the second—it is the first Tuesday after the second Monday in December, I think; about the middle of December in each year.

Q. Who calls those annual meetings, Mr. Hughes? A. It 884
is called——

Mr. Sykes: If the Examiner please, I don't see the object of this testimony. It has no bearing upon the issues which are to be presented at this hearing.

Trial Examiner Furnas: I have been wondering myself. I assume that counsel for the Commission is laying a foundation probably for——

Mr. Morgan: I am, and I don't——

Mr. Sykes: We will consent to something and it will save time.

Mr. Morgan: If your Honor please, it is alleged in the complaint of the Commission that the American Red Cross is a quasi-governmental body. The answer to the Respondent disclaims knowledge as to that, neither admits it nor denies it. I submit, sir, that the Commission has a right to show and should properly show that not only has the American Red Cross been designated—or been established as a quasi-governmental body, but that it operates as such. 885

Trial Examiner Furnas: Well, I am going to let you continue this.

Mr. Morgan: That is the purpose of this examination, sir, to show that it operates as such. There is a

lot of difference between being designated as something and doing it.

Trial Examiner Furnas: Yes. Well, I am going to allow you to continue.

Mr. Morgan: I just want that clear.

Trial Examiner Furnas: I did not understand that there was an objection; it was just merely a suggestion on the part of counsel for the Respondent; wasn't it?

Mr. Sykes: Yes. I did not make any objection.

Trial Examiner Furnas: Well, that is the way the
887 Examiner understood it. Proceed.

Mr. Sykes: We admit in our answer the allegations of Paragraph 5, except in so far as the paragraph refers to statutes and other public documents, and we refer to the statutes or public documents for the terms in that respect, and except as to the allegation of the Red Cross as to a quasi-governmental organization of which Respondent has no knowledge or information.

Mr. Morgan: That is what I said. That is what I said.

Trial Examiner Furnas: Well, I am going to allow you to proceed.

888 Mr. Morgan: That is what I said. That is the reason I have gone into this——

Mr. Sykes: All right.

Mr. Morgan: —the—because you did not plead to it.

By Mr. Morgan:

Q. This annual meeting—who calls the annual meeting, Mr. Hughes? A. It is called by the Central Committee upon official call by the Secretary of the corporation.

Q. Does the Red Cross prepare and submit an annual report, Mr. Hughes? A. An annual report is prepared by the

889

organization and submitted by the Secretary of War to Congress each year.

Q. Does the American Red Cross have an ex officio president?

Mr. Sykes: That is all admitted by the pleadings.

A. The President of the United States for a great many years has served as the president of the American Red Cross.

Q. What officers, if any, are elected annually?

Mr. Morgan: I will be through in a minute, Mr. Sykes.

890

A. Well, the election of the Secretary and Assistant Secretary, the Treasurer, Assistant Treasurer, those officers are not elected annually, but they are elected and continue until there is need for re-election in those instances.

Q. I will ask you whether the treasurer's accounts of the American Red Cross are audited annually. A. They are doubly audited. They are audited by our own auditors and they are audited independently by so-called War Department auditors who function under the authority of the Chief of Finance of the War Department.

Q. Mr. Hughes, I show you a document here which I will designate as Commission's Exhibit No. 13.

891

(The document referred to was marked "Commission's Exhibit 13" for identification.)

Q. (continuing) I will ask you if you can identify that document, Mr. Hughes. A. That is a charter, by-laws, and endowment fund regulations of the American Red Cross.

Mr. Morgan: If your Honor please, I would like to submit that in evidence as Commission's Exhibit No. 13.

Trial Examiner Furnas: The entire document?

Mr. Morgan: Well, yes, I think the entire document ought to go in.

Trial Examiner Furnas: You don't intend to have it copied in the record, or anything, do you?

Mr. Morgan: No, it need not be copied in the record.

Trial Examiner Furnas: Is there objection?

Mr. Sykes: It has no bearing on our issues. I have no objection.

Mr. Morgan: It shows the by-laws under which the American Red Cross operates, and I submit it is
893 of interest and pertinent in this investigation.

Trial Examiner Furnas: Mr. Reporter, you will note that the document described by counsel for the Commission and identified by the witness will be received and marked as Commission's Exhibit No. 13.

(The document referred to was marked "Commission's Exhibit 13" and received in evidence.)

Trial Examiner Furnas: All right. Proceed.

By Mr. Morgan:

Q. Mr. Hughes, can you tell us whether there is more
894 than one type of——

Mr. Sykes: Just a minute.

Trial Examiner Furnas: Off the record.

(A discussion was had off the record.)

Trial Commissioner Furnas: On the record. Proceed.

By Mr. Morgan:

Q. I will ask you, Mr. Hughes, if there is more than one type of membership in the American Red Cross. A. We have four or five types of membership, our annual member-

ship, contributing membership, sustaining membership, and a life membership.

Q. Just what is meant by "annual membership" of the Red Cross, Mr. Hughes? A. The annual membership is a membership which is—well, may I strike just the start of that, please?

Trial Examiner Furnas: Yes, yes.

A. (continuing) Annually the Red Cross appeals to the American people to join the American Red Cross through our various Chapters and branches spread throughout the United States. This joining is accomplished by assenting 896
to or accepting the invitation, receiving a membership card and button, and for that membership a dollar is paid.

Q. Can you tell us approximately how many so-called annual memberships you now have in the American Red Cross, Mr. Hughes? A. We have approximately at the present time 15,000,000 adult members and 14,000,000 junior Red Cross members.

Q. You mean 29,000,000 together? A. Yes.

Q. Can you tell us how many branch Chapters there are of the American Red Cross in the United States? A. We have approximately 3,760 Chapters in the United States, and approximately 6,000 branches. 897

Trial Examiner Furnas: How many Chapters?

The Witness: About 3,760. We have—it may be of interest to know that, generally speaking, our Chapters have jurisdiction over an area which is co-extensive with county boundary lines, so that we have just a few more Chapters than there are counties in the United States.

Q. Mr. Hughes, can you tell us approximately to what extent the American Red Cross is supported and financed by the general public of the United States. A. Well, all of

its support comes from the general public through voluntary contributions except certain phases of its work at times are carried out under the direction of Congress through the distribution of commodities or supplies which are Government-owned or which are purchased through the use of Government funds and entrusted to the American Red Cross for distribution.

Q. Mr. Hughes, just in order to bring this picture down to date, could you tell us rather briefly something of the present scope and extent of the work of the American Red Cross at this time? A. Off the record. Would you stop me, 899 Judge, when I said too much? That is a big—you know, it is a big story, but maybe I can summarize it in just a few words.

Trial Examiner Furnas: Off the record.

(A discussion was had off the record.)

Trial Examiner Furnas: On the record. Answer the question.

A. The chief function of the Red Cross at the present time is to serve as a medium of communication between the armed forces and the people back home. To that end we 900 maintain field directors in every Army and Navy establishment, and we have our personnel attached to and a part of all of the task forces which are now operating in foreign countries, American Army task forces, if you please. We have also been the chief exponent and developer of first aid and life saving in the United States and in the teaching of home nursing. Our graduates in both of those fields exceed more than 5,000,000 people. We are the recognized national disaster relief agency, and we handle disasters at the approximate rate of 200 per year. We are part of the League of Red Cross Societies and of the International Red Cross, and as such cooperate with foreign Red Cross societies in

fulfilling the purposes of the national and international organizations.

Trial Examiner Furnas: That is all right. Thank you.

Q. Thank you, Mr. Hughes. Mr. Hughes, I will ask you whether or not you are familiar with the Red Cross emblem that was created by the Geneva Convention of 1864. A. I am, sir.

Q. I will ask you if the emblem which is now used by the Red Cross and has been used by the Red Cross is that which was created and authorized by the Convention of 1864. 902
A. It is, sir.

Q. Mr. Hughes, I will show you Commission's Exhibit No. 8 here, and I will get you to examine that as to any emblem or sign or insignia you find on it and give us your impression as to what it is.

Mr. Sykes: Impression as to what what is?

Mr. Morgan: The emblem, the emblem or sign or insignia, I am referring to there.

A. These emblems, R. Cross emblems, are exact replicas of the emblem of the American Red Cross.

Q. Yes, sir. Mr. Hughes, can you tell us whether the Red Cross has ever been engaged in the manufacture of 903
any product for commercial purposes? A. It has not, sir.

Q. Has the Red Cross ever operated any mill or factory? A. No, sir.

Q. Has the Red Cross ever endorsed or approved or sponsored any commercial product? A. It has not.

Q. Has the Red Cross ever commercially profited from the sale of any product?

Trial Examiner Furnas: What was that question again?

904 *By Mr. Morgan:*

Q. Has the Red Cross ever commercially profited from the sale of any product?

Mr. Sykes: I doubt the competency of the witness to testify on that. If he knows——

Trial Examiner Furnas: Well, if the witness knows of his own knowledge.

Mr. Morgan: If he does not know, I don't want him to tell us.

Trial Examiner Furnas: If he knows of his own
905 knowledge, he may answer the question.

Mr. Sykes: He is a lawyer and he knows what the language means.

A. The answer is "No."

By Mr. Morgan:

Q. Has it obtained any percentage from the sale of any commercial product? A. No, sir.

Q. Has the Red Cross ever set or prescribed or undertaken to set or prescribe any sanitary standard for the manufacture of any article of commerce not intended for its
906 own use? A. It has not.

Q. Is there now or has there ever been any connection or business relationship between the American Red Cross and the Respondent in this case, the A. P. W Paper Company? A. None.

Q. Mr. Hughes, I understood you to say that among your principal work was that involving the protection of the Red Cross name and emblem? A. That is so.

Q. In connection with such work—that is, the work of protecting the name and emblem of the Red Cross—has it been the practice of the American Red Cross to sue people or to use moral persuasion with them?

Mr. Sykes: Objected to as irrelevant and immaterial.

Trial Examiner Furnas: He may answer that. Objection overruled and exception granted.

A. It has always been the practice to use moral persuasion to——

Q. In that relation, I will ask you whether the Red Cross ever requested the Respondent, the A. P. W. Paper Company, to discontinue the commercial use of the red cross name and emblem. 908

Mr. Sykes: I object to that, if the Court please.

Trial Examiner Furnas: Objection overruled and exception granted.

A. We did.

Q. Do you recall what year that was, Mr. Hughes? A. 1932.

Q. Can you tell us briefly what happened in that connection?

Mr. Sykes: This is all taken subject to the same objection.

Trial Examiner Furnas: Yes. Same ruling. 909

A. I had a very extensive visit from one of the attorneys, a Mr. Forrest,——

Trial Examiner Furnas: Who?

The Witness: Forrest, of the Frazier Mandley firm. Perhaps Mr. Sykes would give me the exact name of it—I forget it—if it is important.

Mr. Sykes: I don't think we have it here.

A. (continuing)——in 1932, during which time we went over at considerable length this question of whether the A. P. W.

910 *H. J. Hughes—For the Commission—Direct*

Paper Company, represented by Mr. Forrest, would voluntarily discontinue the use of the red cross name and emblem on toilet paper. Mr. Forrest said that he would be very happy to have that question considered by his clients. It was considered, and at a later date Mr. Forrest wrote me saying that they——

Mr. Sykes: If he is talking of something in writing, let us have the writing, if the Court please. It is not the best evidence.

Mr. Morgan: I have got a copy if you want it. I have it here,——

911

Mr. Sykes: Give him a copy of anything you want

Mr. Morgan: —some place.

Trial Examiner Furnas: You can let the witness take it and refresh his memory with it if he cares to.

The Witness: He just wrote me and said that the company could not see——

Mr. Sykes: Do you overrule my objection that this is not the best evidence?

Trial Examiner Furnas: I have not ruled at all.

Mr. Sykes: I have that objection, that this statement without writing is not proper evidence.

Mr. Morgan: May it please the Court, why, all witnesses available—in connection with this can be made available for examination. I submit that——

912

The Witness: I don't think it is important. I am just going to answer—excuse me, if I may, off the record.

Trial Examiner Furnas: Off the record.

(A discussion was had off the record.)

Trial Examiner Furnas: On the record.

By Mr. Morgan:

Q. I hand you a copy of a letter, Mr. Hughes, and ask you to see if you can identify that. A. Yes. That is a letter

which I received from Mr. Forrest stating that his client could not agree to voluntarily discontinue the use of the name and emblem of the red cross.

Mr. Morgan: I would like to submit that document into evidence, may it please your Honor, as Commission's Exhibit No. 14-a and b.

Trial Examiner Furnas: Have you seen the——

Mr. Sykes: I don't care. I object to it as irrelevant and immaterial.

Trial Examiner Furnas: Objection overruled. Is there any other objection besides that? 914

Mr. Reporter, you will note that the letter identified by the witness will be received and marked as Commission's Exhibit No. 14-a and b.

(The letter referred to was marked "Commission's Exhibit 14-a and b" and received in evidence.)

By Mr. Morgan:

Q. Mr. Hughes, I will ask you whether later the American Red Cross requested the Respondent, the A. P. W. Paper Company, not to extend the red cross name and emblem to cover its product paper towels. 915

Mr. Sykes: Same objection.

Trial Examiner Furnas: Same ruling.

A. We protested against that extension.

Q. Were you successful or unsuccessful in that effort?

A. Unsuccessful.

Q. I will ask you whether, if you know, the Respondent, A. P. W. Paper Company, ever asked and obtained approval by the American Red Cross of the commercial use of the red cross name and emblem. A. There is no record of such a request.

916 *H. J. Hughes—For the Commission—Direct*

Q. Do you know whether the American Red Cross has ever consented to the commercial use of its name and emblem by the A. P. W. Paper Company?

Mr. Sykes: Objected to as irrelevant and immaterial.

A. We have not.

Trial Examiner Furnas: Objection?

Mr. Sykes: Yes.

Trial Examiner Furnas: Objection overruled. Exception granted. Answer the question.

917

A. We have not.

Q. Mr. Hughes, can you tell us what is the attitude of the American Red Cross with respect to the commercial use of its name and emblem?

Mr. Sykes: Same general objection.

Trial Examiner Furnas: Same ruling.

A. We are greatly concerned by the commercial use of the name and emblem of the organization by——

Q. A little louder, please, sir.

A. —by so many outside commercial companies and——

918

Mr. Sykes: Did he say "many"?

The Witness: "So many."

Trial Examiner Furnas: "So many."

Mr. Morgan: "So many," he said.

A. —and we feel that such use is a serious detriment to the work of the American Red Cross.

Mr. Sykes: I move to strike out the witness' feelings.

Trial Examiner Furnas: His what?

Mr. Sykes: I move to strike out the statement as to what the witness feels.

Trial Examiner Furnas: I did not understand that the witness gave his feelings. I thought he was speaking of the feeling or the sentiment of the Red Cross,——

Mr. Morgan: He was.

Trial Examiner Furnas: —and not his personal feelings.

Mr. Sykes: I move to strike out his statement as to the sentiment of the Red Cross.

Trial Examiner Furnas: Well, motion denied. Exception granted. It may go in the record. 920

By Mr. Morgan:

Q. I will ask you, Mr. Hughes, whether in connection with your official duties with the Red Cross, you ever had occasion to investigate the extent of the commercial use of the Red Cross' name and emblem, or to deal with matters like that. A. During the past 20 years I have handled myself approximately 3,500 separate matters affecting the use and misuse of the Red Cross name and emblem, and since January 1, 1939, I have handled approximately 350 separate cases involving the use or misuse of the Red Cross name and emblem.

Q. I will ask you whether or not, in connection with and as a result of your activities and investigations in that line, misconception and confusion on the part of the public was disclosed. 921

Mr. Sykes: I object to that as——

A. In many respects it has been.

Trial Examiner Furnas: Just a minute. Just a minute. What is your objection?

Mr. Sykes: I object to it, in the first place, as general, an expression of an opinion, it is not based on the evidence as to the individual instances, and

922 *H. J. Hughes—For the Commission—Direct*

as failing to express a view as to what the Government conceives to be the real issue in this case.

Trial Examiner Furnas: Read the question, Mr. Reporter.

(Question read by reporter.)

Trial Examiner Furnas: The witness may answer.

923 A. There has been great and increasing misconception and confusion on the part of the public with reference to the commercial use of the Red Cross name and emblem and the connection between that commercial use and the American Red Cross.

Mr. Sykes: I move to strike his statement as to what the public thinks about it.

Trial Examiner Furnas: No; he is a man that is —— dealing with them. Objection overruled. Exception granted.

By Mr. Morgan:

924 Q. Mr. Hughes, I will ask you whether you know—and if you don't know, just say so—the Respondent, A. P. W. Paper Company, to your knowledge, ever sold goods under the red cross name and emblem in connection with the use of any such qualifications as "not conducted with the National American Red Cross"? A. I have never seen such.

Q. Or——

Mr. Sykes: We admit no such limitation has been put on any product which we have sold.

Mr. Morgan: That is all, then.

Trial Examiner Furnas: Cross examine.

Cross Examination by Mr. Sykes:

Q. You have referred, Mr. Hughes, constantly to "American Red Cross." That isn't the name of the organization; is it? A. No. The technical corporate title is "The American National Red Cross."

Q. Yes. In ordinary use you drop the word "National"? A. Beginning with the last war, for simplification we dropped "The" and "National"; just call it "American Red Cross."

Q. Now, when the Convention of '64 started the International Red Cross Association, by whatever name it was 926
then known, it adopted an emblem; did it not? A. Yes.

Q. Was that emblem one which was in pretty general use at the time in Europe? A. That emblem, as far as any historical search discloses, was never previously used in the specific coloration which is prescribed by the Treaty of Geneva. It is a unique emblem, as far as any research has been able to disclose, beginning with the Treaty of Geneva in 64, and its adoption as a particular sign or badge.

Q. Wasn't it used by a certain branch of the Knights Templar? A. A great many organizations of mercy, and I assume practically all of the churches since the dawn of Christendom have used in one form or another a cross, more 927
often a——

Q. I am not referring generally to a cross, but I am referring to a red cross. A. No, not a red cross; not a Greek red cross.

Q. You understand that the Greek red cross was not used by any of the Knights Templar? A. That is my understanding.

Q. And you understand that it wasn't used by—used generally in connection with pharmacies and that sort of thing in Europe? A. I understand that it was not, until it was begun—until after 1864.

928 *H. J. Hughes—For the Commission—Cross*

Q. Well, now, you spoke about a protest that they made against the extension of the trade-mark of the A. P. W. Paper Company. To whom did you make a protest, and what did you say? A. According to my best recollection, we saw a mark which was being offered for registration as recorded in the Official Gazette of the United States Patent Office, and when that application for registration was made and when we noted an extension of use was contemplated, from toilet paper to a different product, we then wrote to Mr. Forrest, asking him under what right his client was proceeding with that contemplated extension.

929 Trial Examiner Furnas: Pardon me. Mr. Forrest, was that the attorney for the Respondent?

Mr. Sykes: It is admitted: representing the A. P. W. Paper Company.

Trial Examiner Furnas: Well, I am asking for my own information.

The Witness: Yes, he was a member of the Frazier-Mandley firm, and, as I understood, he represented the A. P. W. Paper Company.

Trial Examiner Furnas: Well, I was asking for my own information.

930 *By Mr. Sykes:*

Q. Then you were given a period of time, were you not, to file your appearance and objection in the Patent Office? A. I assume we had that right.

Q. Yes. And you didn't enter any objection to the granting of the sign in the Patent Office? A. We never have in any single case entered any objection.

Q. You didn't in that case; did you? A. No, we did not in that case and we have not in any other case.

Q. Although you had the opportunity so to do; it was called to your attention at the time? A. I can't recollect—I

knew that we had that right. I don't know whether it was called to our attention.

Q. Well, within the period of time which was allowed anybody to object to the use of that sign in the Patent Office you were informed that they were making an application for what you term an extension of their trade-mark? A. I will have to give you the same answer. When you use the word "informed" I don't recollect any one informing me, but I had the knowledge that we had a right to object had we so desired

Q. It is fair to say that you obtained that knowledge from information; isn't it? So you think I am trying to put words in your mouth when I use the word "informed"? A. Well, "informed" may mean a statement made by another person. Now, it is just a question of quibbling over what the word "informed" means. I knew that we had that right and we made no protest to the Patent Office. 932

Q. How many of these commercial companies do you find that use the trade-mark in interstate commerce? A. I have never been able to make a determination in the field of interstate commerce, but there are literally hundreds of companies that have or are making use of the Red Cross name or emblem for commercial purposes.

Q. And have made use of that since 1905? A. Yes, since 1905. 933

Q. You have recognized as a lawyer all the time that those who used the mark prior to 1905, under the very terms of the statute, were given the right to continue the use for the same class as they had previously used it? A. For the same purpose and for the same class of goods.

Q. "For the same purposes" meant for legal purposes; did it not?

Trial Examiner Furnas: What?

Mr. Sykes: "For the same purposes" meant for legal purposes; did it not?

A. I assume it did.

Q. And there is a punishment under the law by which persons who started using the mark after 1905 could be fined; is that right? A. Fined and/or imprisoned——

Q. Fined and/or imprisoned.

Mr. Morgan: If the Examiner please, I don't——

A. (continuing): ——if such use is illegal.

Trial Examiner Furnas: What is it?

Mr. Morgan: If the Examiner please, I don't care
935 particularly as to that, but I didn't go into that in my direct examination.

Trial Examiner Furnas: I think counsel for the Respondent has a perfect right to proceed.

Mr. Morgan: It is all right.

Trial Examiner Furnas: I think he is perfectly within his rights. Off the record.

(A discussion was had off the record.)

Trial Examiner Furnas: On the record.

By Mr. Sykes:

Q. You generalized about misconception of people as to
936 the use of this mark. Have you any particular individuals that you can put your fingers on as having misconceived the use of the mark? A. Attorneys in Brooklyn have stated that their companies——

Q. I am talking about personal knowledge that you have. A. Yes, this is a personal knowledge case.

Q. Yes? A. Attorneys in Brooklyn proceeded to have a state registration of the Red Cross emblem issued by the State of New York, and when our protest was received they stated to us, "We did that because we see so many other people using the Red Cross emblem. We felt we also had a right to make use of it."

That type of misconception has abounded throughout the years and has increased in recent years, it is for that reason that the volume of our work in attempting to handle these ever new misuses of the emblem has been increasing over the years.

Q. Each time that you call the attorneys' attention to the fact it is illegal to use the mark, it has been discontinued; hasn't it? A. Well, that is doubtful. We called the attorney's attention in this particular case, and it wasn't discontinued.

Q. It isn't asserted in this case, is it, that this mark 938
wasn't used before 1905? A. But the statute says, "for the same purposes and same class of goods," and, in our opinion, the extension which the A. P. W. Paper Company made of the mark is an illegal extension under the statute.

Q. Yes. That is a question of—— A. Law.

Q. —construction of law? A. Yes, sir.

Q. The question being purely whether the extension from toilet paper to toilet tissue and now the extension from toilet paper to towels is or is not a change in the class or use? That is proper; isn't it? A. It is a matter of the construction of language and the intent of Congress.

Q. Yes. And you know that it has passed through the 939
Patent Office; do you not? It was passed upon there? A. Well, I don't know whether any question was before the Patent Commissioners when they allowed the mark. I don't know that.

Q. Don't know that.

Mr. Sykes: I think that is all, Mr. Examiner.

Trial Examiner Furnas: Off the record.

(A discussion was had off the record.)

Trial Examiner Furnas: On the record. Proceed.

940 *Robina Rae—For the Commission—Direct*

By Mr. Sykes:

Q. What are the names of those Brooklyn attorneys, Mr. Hughes? A. They were the attorn /s for the Federal Paper Company. I could supply the name of the attorney.

Q. Would you be good enough to let me know the name? A. I would; if you will just write your name and address down, I will drop you a note.

(A discussion was had off the record.)

Trial Examiner Furnas: On the record.

941 Mr. Sykes: No further cross examination.

Trial Examiner Furnas: Any further questions?

Mr. Morgan: No questions.

Trial Examiner Furnas: You are excused, Mr. Witness.

(Witness excused.)

(A discussion was had off the record.)

Trial Examiner Furnas: On the record.

What is your further pleasure?

Mr. Morgan: If your Honor please, I would like to call Miss Robina Rae as the next Commission's

942 witness.

ROBINA RAE was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Morgan:

Q. You are Miss Robina Rae? A. Yes, sir.

Q. Please state your occupation or profession, Miss Rae. A. I am Librarian of the American National Red Cross and Director of the Museum.

Q. How long, Miss Rae, have you been connected with the Red Cross? A. Since 1920. I came as Librarian at that time.

Q. That is approximately 22 years? A. Yes.

Q. Did you have anything to do with the organization or creation of the American Red Cross Library? A. Yes. It was very small when I came there. We began to collect books and records.

Q. Of what does that library now consist? A. It consists of all of the publications of the American Red Cross from the time of its organization and of all of the publications of the International Red Cross Committee and the League of Red Cross Societies and the publications of the foreign Red Cross societies, about 63 different—— 944

Q. I will ask you if the so-called archives of the American Red Cross are under your supervision and charge. A. Archives in the nature of correspondence come under files, but archives as far as history or reports are in the library.

Q. You have charge of those; do you? A. Yes, sir.

Q. I will ask you if you made any special study of the history of the American Red Cross and its work. A. Yes. It is almost necessary in the position that I was in to——

Q. Including the use of the Red Cross emblem? A. Well, only in cataloguing and getting ready for reference all the literature that had been published on the use of the emblem and all phases of Red Cross. 945

Q. Miss Rae, in Paragraph 6 of the answer of the Respondent in this matter it is stated, among other things there, "The adoption of the Red Cross as a symbol——"

"At the Convention of 1864 the adoption of the Red Cross as a symbol was little known in the United States until many years after the event."

I will ask you whether, in connection with your duties, work, as custodian of the archives of the American Red

946 *Robina Rae—For the Commission—Direct*

Cross, you can furnish us with historical exhibits which would enable us to see how early and to what extent the emblem was used in America. A. Yes. Of course, we had two unofficial delegates at that convention of 1864, Miss Bowles, who is with the United States Sanitary Commission, and Mr. Fogg, who was the United States Minister to Switzerland; Dr. Bellows, who was President of the United States Sanitary Commission, was greatly interested in that convention, and he knew all about it. And two years after the convention Dr. Bellows organized a society in this country called the American Association for the Relief of the
947 Misery of Battlefields, using as its emblem the red cross. That was adopted in the Convention of Geneva. That is the constitution of his organization (witness producing paper).

Q. I will ask you if that document to which you have just referred is an historical document rather than some current publication. A. Oh, it is historical, published in 1866.

Mr. Morgan: If your Honor please——

Mr. Sykes: 1886, is it not?

The Witness: This is the one (indicating).

Mr. Morgan: 1866, Judge.

Mr. Sykes: Oh, yes.

948 The Witness: '66.

Mr. Morgan: '66. If your Honor please, in that connection, right here, I would like to offer as Commission's Exhibit No. 15 for identification the fly leaf of that historical document to which the witness has just referred.

Trial Examiner Furnas: Is there objection?

Mr. Sykes: Yes, objected to as having no bearing on the issues here.

Trial Examiner Furnas: Objection overruled and exception granted. The document described by the

witness will be received and marked as Commission's Exhibit 15.

(The document referred to was marked "Commission's Exhibit 15", and received in evidence.)

By Mr. Morgan:

Q. Will you proceed, Miss Rae? A. And this organization, the American Association for the Relief of the Misery of Battlefields, organized by Dr. Bellows—he was the president of it—continued about two years, hoping that it would be the first Red Cross society in this country. But Congress 950
did not adhere to the Treaty of Geneva; therefore, it could not become a national organization.

Q. Go ahead, ma'am, and take your history on up, now. A. And from then on after it was discontinued for a few years and it was not—there was no organization in this country, but Miss Clara Barton went to Europe in about 1869, and became interested in the Red Cross Society over there, came back to this country, and 1877, she organized a committee to study the—or to make plans for organizing a society in this country. It was not until 1881, however, that she was able to get Congress interested in adhering to the Treaty of Geneva—or the Convention of Geneva. In 951
1881, she organized a society—or she enlarged on the committee that she had before that time, and in 1882, the Treaty of Geneva was—the Congress adhered to the Treaty of Geneva and the American——

Trial Examiner Furnas: Do you refer to the United States Congress?

The Witness: Yes, United States Congress.

Mr. Sykes: Referring to some statute?

The Witness: And the American Red Cross—yes.

Mr. Sykes: May I ask the witness a question right at this point?

Trial Examiner Furnas: Yes.

952 *Examination on Voir Dire by Mr. Sykes*

Examination on Voir Dire by Mr. Sykes:

Q. Are you referring to some statute to which we could refer for more accuracy than your statement? A. The presidential proclamation.

Q. Have you some reference to what you are referring to? A. Could I have that Clara Barton book, please? (Producing book.) You mean the 1882?

Q. Yes. A. Yes; it was the——

Mr. Morgan: Page 46, I think, 46 and 47.

953 The Witness: Yes, 46 and 47, the American Association of the Red Cross.

Trial Examiner Furnas: I understand counsel for the Respondent is asking if you can give some reference to some statute which covers that point you wanted.

Mr. Sykes: Yes. What I thought was the witness was purporting to talk about Acts of the Government. Those must appear in some documents of some kind.

The Witness: Yes.

Mr. Sykes: And I propose to have those rather than the witness' statement, although skillful may-
954 be the witness.

Mr. Morgan: I have that document. Just at this point——

Trial Examiner Furnas: Just a minute. Are you through, Mr. Attorney, with the witness?

Mr. Sykes: Yes, sir.

Trial Examiner Furnas: All right. Proceed.

Direct Examination by Mr. Morgan (Continued):

Q. I will show you here, Miss Rae, documents, pages 46 and 47 of the book, you say, the Clara Barton book. A. Yes.

Q. By the way, what is the date of that Clara Barton book? A. It was published in 1898 and—copyrighted in '98.

Q. '98? A. She has several editions. I have two or three.

Q. How long has Clara Barton been dead, if you know? A. She died in 1911, I believe.

Q. So that book, I take it, from the fact that it was written prior to 1898, and she has been dead since 1911, is an historical work? A. Yes.

Mr. Morgan: If your Honor please, I am showing 956
the witness photostats of pages 46 and 47 of that historical work and am getting her to tell us what they are?

A. Yes, this is——

Mr. Sykes: Let it be marked for identification, if the Examiner please.

Mr. Morgan: Yes, I would like to——

A. —is the constitution——

Trial Examiner Furnas: You are offering them 957
for identification?

Mr. Morgan: Yes.

The Witness: Oh, yes. That is the American Association of the Red Cross, the original incorporation of this.

By Mr. Morgan:

Q. And the other document is what? A. Is the constitution.

Trial Examiner Furnas: The other. Now, which one do you refer to as the other one?

The Witness: This one.

Trial Examiner Furnas: I know, but I want the counsel to designate.

Mr. Morgan: Wait just a second.

Mr. Sykes: I think we ought to proceed in a normal course. Let them be marked for identification.

Trial Examiner Furnas: That is what I think.

Mr. Morgan: I will identify them in the regular course.

Trial Examiner Furnas: Just let the reporter mark them. They will be marked for identification as
959 Commission's Exhibits 16 and 17.

Mr. Morgan: That is right.

Trial Examiner Furnas: Mr. Attorney, which are you offering as 16 and which are you offering as 17?

Mr. Morgan: I think I had better take the incorporation first as 16, the original incorporation, and the constitution as 17.

Trial Examiner Furnas: Are you offering them in evidence?

Mr. Morgan: Yes, your Honor. Mr. Sykes is looking at them now.

Trial Examiner Furnas: All right. I just want to
960 know whether you made the offer or not.

Mr. Morgan: I am going to now.

Trial Examiner Furnas: Is there objection?

Mr. Sykes: Objected to as irrelevant and immaterial.

Trial Examiner Furnas: Objection overruled.

Mr. Morgan: If your Honor please, I offer Commission's exhibits for identification 16 and 17 in evidence.

Trial Examiner Furnas: Oh, I understood you to say that you had already offered them. Well, the objection and the ruling will be the same, and they will

be received and marked as Commission's Exhibits 16 and 17.

(The documents referred to were marked "Commission's Exhibits 16 and 17", respectively, and were received in evidence.)

Trial Examiner Furnas: Proceed.

By Mr. Morgan:

Q. Will you go ahead, Madam? A. And then it became a national organization in 1882, when Chester A. Arthur 962
signed the proclamation making it a national organization.

Trial Examiner Furnas: Chester A. Arthur was President at that time?

The Witness: President of the United States.

By Mr. Morgan:

Q. You mean the Geneva Convention? A. Yes. Well, he was——

Q. You mean that we ratified that in 1882? Is that what you mean to say? A. Yes; it was ratified by the Congress and signed by the President.

963

Trial Examiner Furnas: Off the record.

(A discussion was had off the record.)

Trial Examiner Furnas: On the record.

By Mr. Morgan:

Q. Miss Rae, I will get you to look at this publication and tell us what it is and whether that is an historical document or not. A. Yes. This is a little booklet or pamphlet by Miss Doolittle, on the American Red Cross, Society of the Red Cross.

964 *Robina Rae—For the Commission—Direct*

Q. Published when? A. It was published—I don't remember the date. (After referring to document) 1895.

Mr. Morgan: If your Honor please,—note the frontispiece there, Miss Rae. I would like to offer as Commission's Exhibit for Identification at this time the frontispiece of that work of which I have a photostat here.

Trial Examiner: Does the witness identify that?

The Witness: I do.

965 *By Mr. Morgan:*

Q. And you identify this as the frontispiece of that work? A. I do, sir.

Mr. Morgan: I would like to offer that in evidence, your Honor, as Commission's Exhibit 18.

Trial Examiner Furnas: Let counsel for the Respondent look at it.

Is there objection? There being no objection, the document——

Mr. Sykes: I have expressed none.

Trial Examiner Furnas: The document will be
966 received and marked as Commission's Exhibit No. 18.

(The document referred to was marked "Commission's Exhibit 18", and received in evidence.)

Mr. Morgan: If I can bunch these up, your Honor—I have several documents here for introduction in evidence which are taken from the Clara Barton historical work of 1898.

Trial Examiner Furnas: Off the record.

(A discussion was had off the record.)

Trial Examiner Furnas: On the record.

By Mr. Morgan:

Q. Miss Rae, I will show you this document here, which is Commission's Exhibits 19, 20 and 21. I will get you to look at those Commission's exhibits for identification 19, 20 and 21, and see whether they are in that historical work. A. Yes, sir. This is the title page of the historical work of——

Trial Examiner Furnas: Now, you are referring to——

The Witness: Commission's Exhibit 19.

Trial Examiner Furnas: For identification? 968

The Witness: Yes. 20 is from the same book by Clara Barton. It is a picture of the first Red Cross warehouse in Washington, D. C.

Trial Examiner Furnas: That is Commission's Exhibit for Identification No. 20?

Mr. Morgan: No. 20.

The Witness: 20. 21 is from the same book by Clara Barton. It is one of the headquarters of National—the National headquarters of the American Red Cross.

By Mr. Morgan: 969.

Q. In what years? A. From 1892 to 1897.

Q. Yes, ma'am. And the other one, I think, is in, isn't it? A. That we have had.

Trial Examiner Furnas: Yes. That is already in.

Mr. Morgan: If your Honor please, I offer those as Commission's Exhibits.

Trial Examiner Furnas: Is there objection?

There being no objection, the photostats will be marked for identification as Commission's Exhibits Nos. 19, 20 and 21, will be received in evidence as marked accordingly.

970 *Robina Rae—For the Commission—Direct*

(The photostats referred to were marked "Commission's Exhibits 19, 20 and 21", respectively, and received in evidence.)

Mr. Morgan: I will be through in a minute, your Honor. I am just almost through.

By Mr. Morgan:

Q. Miss Rae, Paragraph 6 of the answer of the Respondent in this matter, among other things, says the first Red Cross society was not formed in this country——

971 Mr. Sykes: From what page are you reading?

Mr. Morgan: Six there, Judge.

Mr. Sykes: Paragraph 6?

Mr. Morgan: Your 6, numbered Arabic 6. Down near the bottom of that Paragraph 6, Judge.

Q. (continuing) "The first Red Cross Society was not formed in this country until 1881, and for many years thereafter it had but a small membership and was little known." Now, I will ask you whether it is an official historical record as to whether or not the American Red Cross participated in the relief of the Michigan Forest Fires in 1881

972 A. It did, sir.

Q. The Mississippi Floods of 1882? A. Yes, sir.

Q. The Ohio Floods of 1883? A. Yes, sir.

Q. The Mississippi Cyclones of 1883? A. Yes, sir.

Q. The Ohio and Mississippi Floods of 1884? A. It did.

Q. The Texas Drought? The Texas Drought of 1886? A. Yes, sir.

Q. Charlestown Earthquake of 1886? A. Yes.

Q. The Florida Yellow Fever of 1888? A. Yes, sir.

Q. The Johnstown Disaster of 1889? A. Yes, sir.

Q. Right there, Miss Rae, I will get you to look at these photostats and tell us what they are, please, identify them, will you?

Trial Examiner Furnas: Just——

Mr. Morgan: I want to let Mr. Sykes see them.

Trial Examiner Furnas: Well, first, let them be marked for identification if you are going to offer them.

(The photostats referred to were marked "Commission's Exhibits 22 and 23", respectively, for identification.)

By Mr. Morgan:

974 Q. Will you be good enough to examine those documents and state whether or not you can identify them? A. Yes, sir. This comes from the report of the Johnstown Flood.

Trial Examiner Furnas: Now, you are referring to which one?

The Witness: The picture of the——

Trial Examiner Furnas: On the back.

By Mr. Morgan:

Q. The number? A. Oh, 22.

Trial Examiner Furnas: All right.

975 The Witness: 22.

Trial Examiner Furnas: For identification.

The Witness: It is one of the Red Cross buildings. It was called the Red Cross Hotel at the Johnstown Flood of 1889.

By Mr. Morgan:

Q. What is the other one there, Ma'am? A. This is from the Clara Barton historical book.

Trial Examiner Furnas: That is twenty——

The Witness: 23.

976 *Robina Rae—For the Commission—Direct*

Trial Examiner Furnas: 23.

The Witness: Which shows the sleeping quarters of Miss Barton at the time of the Charleston Sea Island Hurricane in 1893, and in '94 they did a lot of the relief work, but the hurricane was in '93.

Q. Both of those pictures are in Miss Barton's history? A. This one is in the history. This is in the report of the disaster at Johnstown.

977 Trial Examiner Furnas: That is 22 that is in the history—23 that is in the history?

Mr. Morgan: 23 is in the history.

Trial Examiner Furnas: and 22?

The Witness: Is in the report on the Johnstown Flood, the work—the disaster work at the Johnstown Flood.

Mr. Morgan: I move that those exhibits for identification be admitted as Commission's Exhibits 22 and 23, your Honor.

Trial Examiner Furnas: Is there objection?

Mr. Sykes: I object to them as irrevelant and immaterial.

978 Trial Examiner Furnas: Objection overruled. The photostats—photostat copies, pictures, described by counsel for the Commission, and identified by the witness, will be received and marked as Commission's Exhibits 22 and 23.

(The photostats referred to were marked "Commission's Exhibits 22 and 23", respectively, and received in evidence.)

By Mr. Morgan:

Q. Miss Rae, do you have any particular knowledge of the extent and character of the relief that was rendered by

the Red Cross at the Johnstown disaster? A. You mean in money?

Q. Well, the scope of the—— A. Yes, at that time—all kinds of materials, buildings and furnishings were supplied to the people; $250,000 was collected; they had many buildings put up for the Red Cross use, and the work extended over almost a year because a lot was torn up.

Q. Did the Red Cross have a substantial staff—— A. Yes.

Q. —at the scene? A. Yes, it did. I can't give you the exact number, but they had a very large staff.

980

Q. I will ask you whether the Red Cross assisted in the relief of the Russian Famine of 1892. A. Yes, sir, they did. At that time a trainload of grain was sent from the Middle West.

Mr. Sykes: This is also from your reading and not from your knowledge?

The Witness: From my reading of Clara Barton's books and knowledge as well, because we have relics in the Museum—the insignia of that train that came loaded with grain from the Middle West—Iowa—and went clear across the continent and was shipped to Russia.

981

By Mr. Morgan:

Q. I will ask you whether the Red Cross participated in the relief of the sufferers of the South Carolina Sea Island disaster of 1893 and '94. A. It did, sir.

Mr. Morgan: That is all.

Trial Examiner Furnas: Cross examine.

Cross Examination by Mr. Sykes:

Q. Do you know what the membership of the Red Cross was in 1900? A. The membership in those days was not——

Q. You can answer that question yes or no. A. No, I do not know.

Q. Is there a record anywhere which will let us know what the membership was in 1900? A. No, not to my knowledge.

Q. Do you know what the membership was in 1897? A. No.

Q. Do you know what it was in 1905? A. Yes.

Q. What was it in 1905? A. It was about—it was under a thousand, but I can't give you the exact number.

983 Q. What was it in 1910? A. To my knowledge—I really can't give you the numbers. I could find them in the library. Some thousands, though, up in the thousands.

Q. It never got any real national importance until our World War? A. Yes; membership as we now know it was established in 1910.

Q. Yes? A. Before that time we did not have the individual memberships as the membership is classified now. We have individual membership. That was established in 1910, the dollar memberships.

Mr. Sykes: I have no more questions.

Trial Examiner Furnas: You are excused.

984 Mr. Morgan: That is all.

(Witness excused.)

(A discussion was had off the record.)

Trial Examiner Furnas: On the record. Gentlemen, what is your further pleasure?

Mr. Morgan: Mr. Examiner, by agreement with Judge Sykes here, I wish to offer in evidence Commission's Exhibits 24 and 25.

Trial Examiner Furnas: What are they?

Mr. Morgan: These have been omitted by me or forgotten by me.

Trial Examiner Furnas: Describe them.

Mr. Morgan: 24 is a cover page of Boyd's Directory of the District of Columbia for the year 1885.

Trial Examiner Furnas: Yes.

Mr. Morgan: And Commission's Exhibit 25 from that Directory, page 938 in the Directory, lists the American Association of the Red Cross.

Trial Examiner Furnas: The Examiner understands there is no objection by counsel for the Respondent, and they will be received and marked accordingly. 986

(The documents referred to were marked "Commission's Exhibits 24 and 25", respectively, and received in evidence.)

Trial Examiner Furnas: Have you any statement to make, Mr. Morgan?

Mr. Morgan: Well, I move you, Mr. Examiner, that the hearings in this matter be adjourned pursuant to the customary five-day notice.

Trial Examiner Furnas: For the purpose of——

Mr. Morgan: Of making an investigation regarding hearings on another aspect of the case or closing the case in chief, and I will endeavor to make my decision very promptly and notify Mr. Sykes. 987

Trial Examiner Furnas: Well, inside of what time?

Mr. Morgan: Oh, two weeks. Will that be all right, Mr. Sykes, two weeks?

Mr. Sykes: That is quite all right.

Trial Examiner Furnas: Now, the Examiner understood some time along in this hearing that the counsel for the Respondent would be ready to put on his case by the 15th of September. Would it be agreeable to counsel on both sides to have this understand-

988 *Colloquy*

ing: That if counsel for the Commission decides not to offer any more testimony and rests, that counsel for the Respondent will be ready to proceed with his side of the case on the 15th of September?

Mr. Morgan: Is that all right, Judge?

Mr. Sykes: That is satisfactory to me.

Trial Examiner Furnas: And will accept this statement here as notice of that date for the hearing?

Mr. Sykes: I so accept it.

Mr. Morgan: It is all right with me, sir.

989 Trial Examiner Furnas: Mr. Reporter—now, get this, both of you—you will note that when this hearing adjourns, it adjourns subject to counsel for the Commission notifying counsel for the Respondent and the Examiner on or before July 15, 1942, whether he desires to offer any further testimony in this matter. If counsel for the Commission does not desire to offer any further testimony, this hearing will be adjourned to reconvene in New York City, at a place to be designated at a later date, at 10 a. m. on the 15th day of September, 1942. Is that agreeable to both of you gentlemen?

Mr. Morgan: It is.

990 Mr. Sykes: Quite.

Trial Examiner Furnas: Mr. Reporter, you will note that the hearing is now adjourned at 11:30 a. m.

(Whereupon, at 11:30 o'clock a. m., June 30, 1942, the hearing was adjourned.)

Transcript of Hearing. Dated September 15th, 1942, New York, New York

991

BEFORE THE

FEDERAL TRADE COMMISSION

Docket No. 4747

IN THE MATTER

of

A. P. W. PAPER COMPANY, INC.,
a Corporation.

992

Oxford Room, Piccadilly Hotel,
227 West 45th Street,
New York, New York,

September 15, 1942.

Met, pursuant to adjournment, at 10 a. m.

Before:

MILES FURNAS, Trial Examiner.

993

Appearances:

MARSHALL MORGAN, Esq., appearing for the Federal Trade Commission.

EMERY H. SYKES, Esq. (Sullivan & Cromwell), 48 Wall Street, New York, N. Y., appearing for the Respondent.

PROCEEDINGS

Trial Examiner Furnas: This is a reconvening by agreement and notice of hearing in Docket No. 4747, at 10 a. m., in the Oxford Room of the Piccadilly Hotel, New York City, the State of New York, the Federal Trade Commission ver-

994 *James T. Forrest—For the Respondent—Direct*

sus A. P. W. Paper Company, Inc. The last hearing was held at Washington, D. C., on June 30th, 1942.

The Record will show that counsel for the Commission and counsel for the respondent are present.

I think you gentlemen understand the rules under which we proceed and I will not take the time to quote them.

The hearing is now open and we are ready to proceed. Off the record.

(Discussion off the record).

Trial Examiner Furnas: On the record. Gentlemen, are
995 you ready to proceed?

Mr. Sykes: The Respondent is ready.

Trial Examiner Furnas: Call your first witness.

Mr. Sykes: I will call Mr. Forrest.

JAMES T. FORREST was thereupon called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Sykes:

Q. State your full name. A. James T. Forrest.

Q. Mr. Forrest, you are an attorney at law in the state
996 of New York? A. I am.

Q. And you were admitted to practice when? A. About the year 1930.

Q. And you reside at New Rochelle? A. I formerly resided at New Rochelle, New York, but I am now legally residing in New York City.

Q. And are you associated with the firm of Fraser, Myers & Manley? A. Yes, sir.

Q. At 165 Broadway, New York City? A. Yes, sir.

Q. And how long have you been so associated? A. I have been associated with that firm, and its predecessor, Fraser, Turk & Myers, since the year 1918.

Q. And from 1918 have you been engaged in trade mark work? A. Since about the year 1920 I first took over trade

mark work in the office, and in the year 1927 was made head of that department.

Q. And how long have you handled trade mark matters of the A. P. W. Paper Company? A. Since they first became associated with my firm, approximately the year 1924.

Q. That company was formerly known as the Albany Perforated Wrapping Paper Company; is that right? A. That is correct.

Q. And its name has been changed under the statutes of New York to A. P. W. Paper Company, Incorporated? A. That is right.

998

Q. You are admitted to practice in the Patent Office of the United States? A. I am.

Q. What is the nature of your work with this law firm? A. Well, originally, before I was admited to the bar, I attended to the soliciting of trade mark registrations both in the United States and in all foreign countries. Since my admission to the bar I have handled the prosecution of all legal problems involving infringements, cancellations, oppositions, and unfair competition actions.

Trial Examiner Furnas: Do you admit his qualifications?

Mr. Morgan: I will admit the qualifications of the witness gladly.

999

Trial Examiner Furnas: Let the record show that counsel for the Commission admits the qualifications of the witness as an expert.

By Mr. Sykes:

Q. I show you a copy of the trade mark issued by the United States Patent Office under registration date of June 13, 1911, application filed December 16, 1908, Serial Number 39,370, and ask you if in connection with your work in the A. P. W. Paper Company you found that that trade mark

1000 *James T. Forrest—For the Respondent——Direct*

was registered. A. Why, yes, this trade mark was duly registered in the year 1911. The change of the name from the Albany Perforated Wrapping Company to A. P. W. Paper Company, Inc. was recorded in the Patent Office by myself, and the registration was renewed in the year 1931 and an application prepared by myself and the registration is now in full force and effect.

Mr. Morgan: Mr. Sykes, that is in evidence as Commission's Exhibit No. 1. Maybe you would like to look at this.

1001 Trial Examiner Furnas: Off the record.

(Discussion off the record.)

Trial Examiner Furnas: On the record.

By Mr. Sykes:

Q. You found that the Albany Perforated Wrapping Paper Company had been using this trade mark since what time? A. Why, I personally have records available showing the use of the mark since the year 1902 — catalogs showing the sale of goods bearing the mark, and copies of invoices.

Q. Your records show it then as far back as 1897, is that
1002 correct? A. No, my records went only to 1902, because we couldn't find any other records.

Mr. Morgan: If the court please, I am not objecting to the testimony, but the statement with reference to the records certainly is not the best evidence for the records are not here.

Trial Examiner Furnas: I will let him go ahead.

Mr. Morgan: O.K., I simply wanted my statement on the record.

Mr. Sykes: I understood at the beginning of this that there was no question about this company hav-

ing had the trade mark of the Red Cross in use prior to 1905.

Mr. Morgan: That is correct.

Mr. Sykes: There is no question on that point, is there?

Mr. Morgan: No. It is just a matter of the character of the testimony, that is all.

Trial Examiner Furnas: We will not split hairs over it.

By Mr. Sykes:

1004

Q. Then did there come a time later when you filed applications for further trade marks in the Patent Office? A. Yes, I did.

Q. And what time was that? A. Some time in the latter part of the year 1933 I had up with Mr. Hollister, the President of the A. P. W. Paper Company, the question of registering the marks in connection with paper towels, goods upon which the marks were then being used. At that time I filed two applications, one covering packages of toilet paper, namely, toilet tissues and paper towels, and the other covering the mark as specifically used on the paper towel carton.

Q. Are these the Petitions, Statements and Powers of Attorney which you filed in that connection?. A. Yes, sir, they are. 1005

Mr. Sykes: I would like to have them marked for identification.

Trial Examiner Furnas: They will be marked Respondent's Exhibits 1 and 2.

(The document referred was marked Respondent's Exhibit 1-A, 1-B, 1-C, 1-D, 1-E, 1-F, 1-G, 1-H, 1-I, 1-J, 1-K, 1-L and 1-M for identification.)

(The document referred to was marked Respondent's Exhibit 2-A, 2-B, 2-C, 2-D, 2-E, 2-F,

1006 *James T. Forrest—For the Respondent——Direct*

2-G, 2-H, 2-I, 2-J, 2-K, 2-L, and 2-M for identification.)

By Mr. Sykes:

Q. Prior to the filing of these petitions, did you have any discussion with Mr. H. G. Hughes, counsel for the American National Red Cross Society? A. Yes, I did. I had a rather lengthy conference, as well as considerable correspondence passing between us, relating to the right of the A. P. W. Company to use its red cross device in connection with toilet
1007 paper.

Mr. Sykes: You put in evidence a letter from or to Mr. Hughes at one of the hearings?

Mr. Morgan: Yes. Commission's Exhibit 14-A.

By Mr. Sykes:

Q. What occurred at this talk which you had with Mr. Hughes? A. Mr. Hughes contacted the A. P. W. Company and asked to have one of its representatives come to Washington to discuss with him A. P. W.'s voluntarily giving up the use of the Red Cross trade mark. As a result of this I telephoned Mr. Hughes some time the latter part of May and
1008 arranged for a conference with him at his office in Washington on June 1, 1932.

Trial Examiner Furnas: Just a minute. Who is Mr. Hughes?

Mr. Sykes: It already appears in the record.

Trial Examiner Furnas: All right. I didn't recall it. Proceed.

By Mr. Sykes:

Q. Do you recall the question? A. Yes. Mr. Hughes at the outset of this conference advised me that the Red Cross

Society recognized that we had the legal right to use the red cross mark and our red cross insignia in connection with our toilet paper. What he said was that the mark was repulsive—the use of the mark on such goods was repulsive to some of the members, and would we not kindly voluntarily give it up. I told him that, of course, that was a matter to be decided by the Board of Directors on behalf of the stockholders, and that I would be glad to report his views on the subject. He specifically stated that if we were to give up voluntarily the use of this mark that the chairman of the Board would be very willing to write us a letter so that we could use that to advertise the reason why we had discontinued it. 1010

Q. Well, to refresh your recollection, was any suggestion made that there was any confusion or misrepresentation or deception by the use of the mark? A. There was absolutely no suggestion made as to confusion or misrepresentation or deception. The only basis set forth was that it was repulsive to some of the members because of the nature of the product.

Q. And what did you say, if anything, in reference to the advertising that had been done? A. Well, I explained to Mr. Hughes that the company had spent many thousands of dollars in advertising; that it had, through me, brought about the discontinuance of the use of the mark by at least, at that time, 35 to 50 different drug stores, grocery stores and paper companies who were using the red cross mark of the A. P. W. in connection with toilet paper. 1011

Q. What, if anything, was said in reference to the institution of law suits? A. Well, nothing was said regarding law suits as far as I can recall at the present time. We had very little reason to bring law suits for the reason that here was a trade mark which we had used and owned since before the Red Cross Act, and the said act having a penalty provision it was not necessary for us to threaten proceedings but merely call attention to the penalty provisions of the act.

1012 *James T. Forrest—For the Respondent—Direct*

Mr. Sykes: In connection with the application made in 1934, I would like to offer in evidence the Petition, Statement and Power of Attorney, Respondent's Exhibit 1-A to -M for identification, and the Petition, Statement and Power of Attorney, Respondent's Exhibit 2-A to -M for identification.

Trial Examiner Furnas: Is there any objection?

Mr. Morgan: I have no objection.

Trial Examiner Furnas: There being no objection by counsel for the Commission, the two documents already described by counsel for the respondent are received in evidence.

1013

Mr. Sykes: If Your Honor please, with the consent of counsel, I would like to substitute photostatic copies of these exhibits which are a part of the office records.

Mr. Morgan: That is agreeable.

Trial Examiner Furnas: There being no objection, the substitution will be made.

(Thereupon a photostatic copy of the document referred to, heretofore marked Respondent's Exhibit 1-A, 1-B, 1-C, 1-D, 1-E, 1-F, 1-G, 1-H, 1-I 1-J, 1-K, 1-L and 1-M for identification was received in evidence.)

1014

(Thereupon a photostatic copy of the document referred to, heretofore marked Respondent's Exhibit 2-A, 2-B, 2-C, 2-D, 2-E, 2-F, 2-G, 2-H, 2-I, 2-J, 2-K, 2-L and 2-M for identification was received in evidence.)

Trial Examiner Furnas: Miss Reporter, you will note a recess while counsel for the Commission answers a telephone call.

(A short recess was taken.)

Trial Examiner Furnas: On the record. Proceed.

By Mr. Sykes:

Q. Before the filing of the petitions, Respondent's Exhibits 1-A to -M and 2-A to -M, and after you had had your talk with Mr. Hughes, this letter of September 23, 1932, Commission's Exhibit 14-A, was written by you to Mr. Hughes? A. That is right, sir.

Q. What occurred after that letter, Commission's Exhibit 14-A, was written? A. Subsequently I received, as I recall, a letter from Mr. Hughes wherein he regretted we could not see his views on the subject and that he hoped 1016
that there would be no further complaints from the standpoint of, as I recall it now, "the repulsive angle"—that is, the use of the mark being repulsive.

Q. What became of the letter which you have referred to? A. I have made a diligent search through all of our records but could not find that letter. This matter of this Red Cross situation has been up on so many occasions that presumably that letter is one that was lost. It is the only one that we couldn't find.

Q. Now will you tell us the steps that took place before the Patent Office in connection with these applications, Respondent's Exhibits 1 and 2? A. These cases were both 1017
filed on October 4, 1933. Subsequently, in each case, on October 27, 1933, what is called a rejection was mailed from the Patent Office, and in each case the rejection was refused on paper towels on the ground that the mark presented was not used on such goods until after the act incorporating the Red Cross Society, Section 58 of the Act of February 20, 1905.

As a result of these rejections, I personally interviewed the Examiner in charge of these particular applications, as well as the primary Examiner in charge of the entire Trade Mark Division. This interview took place on November 24, 1933. Arguments and requests for reconsideration as a result of the interviews were filed on or about November

28, 1933. As a result of the interviews and the arguments, the primary Examiner as well as the trade mark Examiner in charge of the cases recognized that the original registration covering packages of toilet paper was complete authority for registering these new marks as covered by these applications, on the ground that the goods were of the same class. The notices of allowance of the marks were mailed from the Patent Office on December 11, 1933, with advises to the effect that the marks would be published in the Official Gazette of January 2d, 1934.

1019 Off the record.

Trial Examiner Furnas: Off the record.

(Discussion off the record.)

Trial Examiner Furnas: On the record.

The Witness: I might add here that the procedure prescribed by the trade mark law and under the act of 1905 requires that the Patent Office publish the mark in the Official Gazette, and thereafter, for a period of thirty days, anyone who believes himself injured may oppose the grant of the mark as published.

Now, after the mark was published on January
1020 2, 1934, I subsequently received a letter from Mr. Hughes of the Red Cross Society.

By Mr. Sykes:

Q. Is this the letter that you refer to as having received? A. Yes, sir, this is the letter, dated January 9, 1934, which was addressed to me.

Mr. Sykes: I ask that it be marked for identification, a letter dated January 9, 1934.

Trial Examiner Furnas: It will be marked Respondent's Exhibit 3 for identification.

1021

(The letter referred to was marked Respondent's Exhibit 3 for identification.)

Mr. Sykes: I offer in evidence the letter from Mr. Hughes, of the American National Red Cross Society, to Mr. James T. Forrest, under date of January 9, 1934.

Mr. Morgan: I have no objection.

Trial Examiner Furnas: There being no objection, the letter described by counsel for the respondent will be received in evidence.

1022

(The letter referred to, heretofore marked for identification Respondent's Exhibit 3 was received in evidence.)

By Mr. Sykes:

Q. After receipt of this letter, Respondent's Exhibit 3, did you have any talk with Mr. Hughes? A. I had no talk with him, but I wrote him in detail on January 15th, setting forth our opinion with respect to the right of A. P. W. to register its mark on paper towels, which right was granted under the act of 1905, they being goods in the same class as packages of toilet paper.

1023

Q. And is this a copy of the letter? A. That is. Mr. Hughes, of course, has the original. This pink copy is the file copy, and at your request I had some typewritten copies made up.

Mr. Sykes: I ask that it be marked for identification.

(The seven-page letter referred to was marked Respondent's Exhibit 4-A, 4-B, 4-C, 4-D, 4-E, 4-F, and 4-G for identification.)

Mr. Sykes: I offer in evidence typwritten copy of Mr. Forrest's answer to Mr. Hughes, dated Janu-

1024 *James T. Forrest—For the Respondent—Direct*

ary 15, 1934, giving you an opportunity to compare it with the carbon copy to see if it is accurate.

Trial Examiner Furnas: We will take a recess while counsel for the Commission is examining the exhibit offered.

(A short recess was taken.)

Trial Examiner Furnas: The recess is now ended. What is your further pleasure?

Mr. Sykes: I offer the copy of the letter of January 15, 1934, to Mr. Hughes, in evidence, as Re-
1025 spondent's Exhibit 4-A to -G.

Mr. Morgan: No objection.

Trial Examiner Furnas: There being no objection, the copy of the letter described by counsel for the respondent will be received.

(The letter referred to, heretofore marked for identification Respondent's Exhibit 4-A, 4-B, 4-C, 4-D, 4-E, 4-F, and 4-G was received in evidence.)

By Mr. Sykes:

1026 Q. Now, from Mr. Hughes's letter it appears that the January 2, 1934 issue of the Patent Office Gazette had this trade mark application with the use of the words "Red Cross" and the Greek cross in connection with paper towels. A. That is right.

Q. Now, if that appeared in the Gazette as of the 2d of January, 1934, how long a period of time after the 2d of January was it possible to file objections? A. There was a statutory period of thirty days, so that brought it down to February 1, 1934.

Q. So it follows that this letter from Mr. Hughes dated a week after the appearance in the Gazette was within the period for filing objections? A. That was within the period. My reply of January 15th was within the period as well as the later acknowledgment of my letter of January 15th.

Q. After you mailed the letter to Mr. Hughes, Respondent's Exhibit 4-A to -G in evidence, did you receive a letter from Mr. Hughes under date of January 31, 1934? A. I received on February 1, 1934, a letter from Mr. Hughes dated January 31, 1934.

Mr. Sykes: I ask that it be marked for identification. 1028

Trial Examiner Furnas: It will be marked Respondent's Exhibit No. 5 for identification.

(The letter referred to was marked Respondent's Exhibit 5 for identification.)

Mr. Sykes: I will offer this letter in evidence as Respondent's Exhibit No. 5.

Mr. Morgan: No objection.

Trial Examiner Furnas: There being no objection by counsel for the Commission, the letter will be received in evidence. 1029

(The letter referred to, heretofore marked for identification Respondent's Exhibit 5 was received in evidence.)

By Mr. Sykes:

Q. Now will you continue with your statement of this matter in the Patent Office? A. After this letter of Mr. Hughes of January 31st, the next word we had in the case was the receipt in the office of two official communications mailed from the Patent Office on February 14, 1934, advising that both of the applications had been examined and allowed, and that the marks would be registered as of March

1030 *James T. Forrest—For the Respondent—Direct*

13, 1934. Both marks were subsequently registered, and are referred to as Commission's Exhibits 2 and 3 respectively. Those registrations, incidentally, are now in full force and effect.

Q. Aside from the questic raised by the Patent Offic itself, were there any objections filed to these applications? A. No, sir.

Mr. Sykes: May it be understood that Respondent's Exhibits 1 A to M and 2 A to M, which have been referred to as Petitions, Statements, and Powers
1031 of Attorney, include the attached papers: the Declaration, dated September 29, 1933; the Notice of Rejection, mailed October 27, 1933; the Amendment to the Petition, dated November 27, 1933; the Notice of Publication in the Official Gazette, stamped "Mailed December 11, 1933"; and the Notice of Allowance of the Patent Office, stamped "Mailed February 14, 1934."

In each case they may be treated as one exhibit, Your Honor.

Trial Examiner Furnas: Is there any objection?

Mr. Morgan: No objection.

Trial Examiner Furnas: There being no objec-
1032 tion the various communications referred to by counsel for the respondent will be attached to to Respondent's Exhibits 1 and 2 and considered a part of them.

By Mr. Sykes:

Q. Did any matters arise as between the A. P. W. Paper company and the Department of Justice in reference to this trade mark? A. Why, yes.

Q. If so, what?

Mr. Morgan: I object to that. That has no part in this proceeding. I didn't go into it. It is purely

extraneous. It has a criminal aspect and I don't see its relevancy.

Trial Examiner Furnas: Does counsel for the respondent consider this pertinent to his case?

Mr. Sykes: I think it is certainly pertinent. The suggestion is made on the record that we haven't the use of the mark on paper towels in 1934, that it isn't within our rights. If you are prepared to admit that if we have any rights as to the 1911 registration we have rights in the 1934 registration it is satisfactory to us.

1034

Mr. Morgan: May it please the court, the testimony put in so far relates to the registration of the marks. The line of questioning which counsel now proposes to go into, as I understand it, involves whether or not this respondent was guilty of a violation of the criminal statute in connection with the use of the mark. I don't see the relevancy of it in this proceeding.

Trial Examiner Furnas: We haven't anything to do with the criminal part of it. We will not go into it any further unless counsel for the respondent wants to connect it up. If counsel feels it is absolutely relevant, I will let him put it in, but as the matter stands now I don't see where it is relevant. However, I am going to let you go ahead. The objection is overruled.

1035

By Mr. Sykes:

Q. Do you recall the question? A. Yes. In about the year 1937, I received a telephone call from Mr. Hollister asking me if I would be available in Albany with reference to an inquiry by the Department of Justice — Mr. Greeny

Trial Examiner Furnas: Mr. Hollister is the President?

1036 *James T. Forrest—For the Respondent—Direct*

The Witness: Yes, he is the President of A. P. W Company, Inc. I went to Albany and interviewed Mr. Greeny with Mr. Hollister. We merely had an informal conference and produced certain evidence requested, and as far as I know the Department of Justice checked the matter and no further action was brought.

Then the next instance I had was when I was called on the telephone again by Mr. Hollister, advising me that Mr. Frascati, of the Federal Trade
1037 Commission, was in Albany, and he arranged, in view of the fact that Mr. Frascati was located at 45 Broadway, to have him see me in my New York office instead of in Albany. This we did, and I submitted to Mr. Frascati, some time the early part of last year, various records, labels, and other matter which he requested.

By Mr. Sykes:

Q. Did you have any occasion to get the opinion of the Commissioner of Patents as to whether or not these toilet tissues and paper towels are goods of the same class? A. We already had the opinion of the Patent Office with respect to
1038 the fact that they were goods of the same class. This is indicated by the action withdrawing the objections in the two cases in 1934. However, in order to specifically submit to the Federal Trade Commission this information, I wrote the Patent Office on February 6, 1941, inquiring as to whether or not they were goods of the same class, and subsequently, on February 10, 1941, I received a letter in the affirmative.

Mr. Sykes: I ask that these two documents be marked for identification.

(The document referred to was marked respondent's Exhibit 6 for identification.)

(The document referred to was marked Respondent's Exhibit 7 for identification.)

Mr. Sykes: I offer these in evidence, to wit: A copy of a letter from Fraser, Myers & Manley to the Commissioner of Patents, under date of February 6, 1941, marked Respondent's Exhibit 6 for identification and a copy of a letter from the Patents Office, under the signature of J. A. Brearley, Jr., Chief Clerk, to the attorneys, under date of February 10, 1941, marked Respondent's Exhibit 7 for identification. 1040

Mr. Morgan: No objection.

Trial Examiner Furnas: There being no objection by counsel for the Commission, the two letters described by counsel for the respondent are received in evidence as Respondent's Exhibits 6 and 7.

(The letter referred to, heretofore marked for identification Respondent's Exhibit 6 was received in evidence.)

(The letter referred to, heretofore marked for identification Respondent's Exhibit 7 was received in evidence.) 1041

Mr. Sykes: If the court please, I would like to substitute for Respondent's Exhibits 6 and 7 photostatic copies of such exhibits in their place.

Mr. Morgan: No objection.

Trial Examiner Furnas: There being no objection, it is so ordered.

(Thereupon, photostatic copies were substituted for the original exhibits and were marked Respondent's Exhibits 6 and 7 in evidence.)

1042 *James T. Forrest—For the Respondent—Cross*

Mr. Sykes: The original exhibits, of course, for which substitution has been made will be retained by counsel in counsel's files and will always be subject to examination by counsel for the Commission.

Trial Examiner Furnas: It is so ordered.

Mr. Sykes: I have nothing further from this witness.

Trial Examiner Furnas: Cross examine.

Cross Examination by Mr. Morgan:

1043 Q. Mr. Forrest, in the early part of your testimony you referred to the activities of the A. P. W. Paper Company in suppressing or preventing others from using the Red Cross mark—— A. (Interrupting.) That is correct.

Q. On products of—— A. (Interrupting.) On either toilet paper or paper towels or goods of the same class.

Q. Yes. I think you mentioned that these activities were exerted perhaps in thirty-five to fifty instances or cases. A. At that time. There are now between seventy-five and a hundred.

Q. Between seventy-five and one hundred? A. Yes.

Q. I will ask you, if you know, can you tell us how many
1044 of the seventy-five to one hundred cases involved the use, or the attempted use of the Red Cross name and emblem by persons who had not taken out registration in connection with it? A. Each and every one of them involved the use by people who had not taken out the registration because the A. P. W. is the only one with the registration for packages of toilet paper or goods of the same class.

Q. So that, if I understand you correctly then, there are seventy-five to one hundred instances or attempts on the part of business concerns or proprietors of businesses in the United States to use the Red Cross name and emblem on products akin to those marketed by the A. P. W. Paper Com-

pany, and those persons did not even have the registration
A. My activities did not only cover the words "Red Cross," the Greek cross, but they covered, for example, confusing similar marks...a white cross on a red background, a red Maltese cross. The term "Red Cross" involved many conflicting points, and that is one of the points I took up with Mr. Hughes. I said that if we gave up the use of the Red Cross, the Red Cross Society could not stop others from using it. I said that was impossible because of other marks which were not direct infringements of the criminal statute but were infringements of our right.

1046 Q. Would you say that most of these infringements, or attempted infringements, were using or attempting to use the Red Cross emblem and name? A. I couldn't say so. I would have to go through the files. I couldn't say. All I do know is that the activity was due directly to the national advertising of the A. P. W. Company in connection with its Red Cross trade mark, because the Red Cross Society doesn't advertise.

Q. Did you have to sue any of these one hundred attempted infringements? A. No, sir.

Q. You just took it up with them by letter? A. That is right.

1047 Q. And those one hundred instances came to your attention in connection with this one product? A. Approximately seventy-five to one hundred instances came up in connection with toilet paper and paper towels, facial tissues, or goods of the same class.

Q. And none, as I understand it, had a registered mark? A. Absolutely not.

Q. That is all on that.

Mr. Forrest, do you recall, in your familiarity with the records in this case, when the A. P. W. Paper Company first began using this mark on paper towels? A. May I see Exhibit 1?

1048 *Colloquy*

The document was handed to the witness.

A. The mark has been used on packages of toilet paper since the year 1897 by the Albany Perforated Wrapping Paper Company, now by change of name the A. P. W. Paper Company, Inc., and specifically on paper towels, which is a package of toilet paper, since September 31, 1933.

Q. Now, coming for a moment to your conferences and exchanges of correspondence with Mr. Hughes, of the Red Cross Society, regarding the extension of the use of the Red Cross name and emblem from toilet tissue to paper towels, 1049 take particularly that thirty-day period that you mentioned in connection with the Patent Office allowing the company's application to make this change. Mr. Hughes never indicated a time that suit would be filed against the company or that litigation would be instituted in the Patent Office by the the Red Cross Society? A. Mr. Hughes, being trade-mark attorney, handling all those matters for the Red Cross was, I presume, well conversant with the trade mark act. He never indicated to me that any action would be brought for the reason he conceded we had a legal right to use it on packages of toilet paper, and the question was whether or not paper towels were goods of the same class. This was recognized by the Patent Office, and I presume Mr. Hughes 1050 checked this record in the Patent Office, saw the status, and therefore decided to do nothing.

Q. So far as your contacts with Mr. Hughes and your conferences on this subject were concerned, as you recall them, the attitude of the Red Cross Society was merely one of moral suasion, was it not? A. That is absolutely correct. There was no question of legal violation. It was merely a question of our voluntarily discontinuing the use of the mark.

Q. And at no time did Mr. Hughes suggest the Red Cross would go to litigation? You were merely requested to do this? A. That was in 1932, sir.

1051

Q. And any other requests that the Red Cross made of you were of the same character? A. They were of a voluntary character.

Mr. Morgan: That is all.

Trial Examiner Furnas: Is there anything further of this witness?

Mr. Sykes: I having nothing more of this witness.

(Witness excused.)

Trial Examiner Furnas: What is your further pleasure, gentlemen?

1052

Mr. Sykes: I think we ought to have an adjournment for a little while to see if we can get together on a stipulation.

Trial Examiner Furnas: It is now 11 o'clock. We will take a recess until 11:30 a. m.

(A recess was taken from 11:00 to 11:30 a. m.)

Trial Examiner Furnas: The hearing is reconvened at 11:30 in accordance with the recess taken. Are you ready to proceed?

Mr. Sykes: We have agreed on the form of stipulation which may save the taking of additional testimony. You might read it on the record.

1053

Mr. Morgan: It is stipulated by and between Mr. Marshall Morgan, counsel for the Commission, and Mr. E. H. Sykes, counsel for the respondent, in this proceeding, that the following documents may be introduced into evidence on behalf of respondent:

(1) "Exhibit II and Exhibit IV appearing respectively on pages 264 and 265 of "Hearings Before the Committee on Foreign Affairs House of Representatives, 77th Congress, 2d Session, on H. R. 6911, and Documents Relating to H. R. 6911," said exhibits comprising a part of "Additional Statements by Johnson & Johnson," as compiled by said firm from annual re-

1054 *Colloquy*

ports of the American National Red Cross, and subject to correction.

2. Report No. 1256 of Mr. Denby from the Committee on Foreign Affairs, May 1, 1910, to accompany H. R. 23011, 61st Congress, 2d Session, is the same appears at pp. 145 to 147 inclusive of said hearings before the Committee on Foreign Affairs, House of Representatives, 77th Congress, 2d Session, on H. R. 6911. Counsel for the Commission accepts said report as accurate, subject to correction.

1055 3. Report on H. R. 14390, 62d Congress, 1st Session, presented January 31, 1912, the same being "A bill to Amend an Act entitled 'An Act to incorporate the American Red Cross,' approved January fifth, nineteen hundred and five," is the same appears on page 151 of said Hearings before the Committee on Foreign Affairs, House of Representatives, 77th Congress, 2d Session, on H. R. 6911. Said report is accepted as accurate by counsel for the Commission, subject to correction. It is admitted by counsel for the Commission that said bill was not passed.

1056 4. List of "Registered Trade-Marks" found in the records of the United States Patent Office" is the same appears at pp. 415 to 425 inclusive of said Hearings before the Committee on Foreign Affairs, House of Representatives, 77th Congress, 2d Session. It is stipulated by both counsel for the Commission and counsel for the respondent that said published list does not contain, nor does it purport to cover or contain, the commercial use or attempted commercial use in various instances, of the Red Cross name and emblem by persons, companies or concerns who did not register or attempt to register the Red Cross name, mark or emblem used by them.

Holloway

It is further stipulated by and between counsel for the Commission and counsel for the respondent that a copy of the certificate of Incorporation The American National Red Cross, No. 2359, Recorded April 22, 1893, at 11 a.m. in the District of Columbia, as the same appears on pp 276 and 277 of said Hearings before the Committee on Foreign Affairs, House of Representatives, 77th Congress, 2nd Session, may be admitted in evidence as Commission's Exhibit 17 B It is stipulated by counsel for the respondent that for the purposes of this proceeding the printed copy of the said Certificate of Incorporation is accurate

Trial Examiner Furnas You may proceed

Mr Sykes While it may be unnecessary to offer this exhibit in evidence I think it is better because it will make it unnecessary to go to the source

The documents referred to were marked Commission's Exhibit 17 B and received in evidence

Mr Sykes I offer in evidence photostatic copy of the definition of the words "Red Cross" in the Oxford English Dictionary

Trial Examiner Furnas It will be marked for identification Respondent's Exhibit

The photostat referred to was marked Respondent's Exhibit for identification

Trial Examiner Furnas You offer it in evidence

Mr Sykes I offer it in evidence as Respondent's Exhibit

Mr Morgan No objection

Trial Examiner Furnas There being no objection by counsel for the Commission, the document described by counsel for the respondent is admitted in evidence

1060 *Colloquy*

(The document referred to, heretofore marked Respondent's Exhibit 8 for identification was received in evidence.)

Trial Examiner Furnas: Off the record.

(Discussion off the record.)

Trial Examiner Furnas: On the record.

Mr. Sykes: On the record, I will say I will supply photostatic copies of the exhibits to which I have referred, they being Exhibits II and IV on pages 264 and 265 of the said record, which disclose that the receipts and expenditures of the Red Cross from 1900 to 1905 inclusive were of no great amount, and that the membership was trifling.

1061

Mr. Morgan: May I make the suggestion that in photostating Table II the photostat will not show a full page but only the end of Exhibit II. Exhibit III is in controversy.

Mr. Sykes: Yes, that is right.

Trial Examiner Furnas: That is agreeable to counsel for the Commission?

Mr. Morgan: Yes.

Trial Examiner Furnas: It is so ordered.

1062

Mr. Sykes: Off the record.

Trial Examiner Furnas: Off the record.

(Discussion off the record.)

Trial Examiner Furnas: On the record.

Mr. Sykes: At the present time I do not contemplate putting in any additional testimony, but I would like to have a short time to come to a final decision after conferring with my client.

Trial Examiner Furnas: You say a short time. Today is the 15th of September. Is October 1st long enough?

1063

Mr. Sykes: Yes, that will be long enough.

Trial Examiner Furnas: Is that agreeable with counsel for the Commission?

Mr. Morgan: That is agreeable.

Trial Examiner Furnas: It is so ordered.

Mr. Sykes: And in reference to my time if I decide to put in no more testimony, inasmuch as I am going to be busy on several trials during October, I would suggest that you make your suggested findings the first of November.

Trial Examiner Furnas: Well, of course, if you do not decide to put on any additional testimony, the record may show that there will be no further taking of testimony after October 1st. The Examiner will then——

1064

Mr. Morgan: You mean on behalf of the respondent?

Trial Examiner Furnas: Yes. What about the Commission?

Mr. Morgan: I submit, may it please Your Honor, as counsel for the Commission I couldn't possibly be in a position to indicate whether there will be any rebuttal until I know whether or not he is going to put in more testimony.

1065

Trial Examiner Furnas: Off the record.

(Discussion off the record.)

Trial Examiner Furnas: On the record.

Gentlemen, what is your further pleasure?

Mr. Morgan: Mr. Examiner, in view of the state of the record and the general situation explained by counsel for the respondent, I move you, sir, that the hearing adjourns subject to five-days notice.

Trial Examiner Furnas: Is that agreeable to counsel for the respondent?

Mr. Sykes: It is.

1066 *Colloquy*

Trial Examiner Furnas: Miss Reporter, you will note that when this hearing adjourns it will adjourn to reconvene on five-days notice, proper notice to be served on counsel for the Commission and counsel for the respondent by the Trial Examiner.

What is your further pleasure?

Miss Reporter, you will note this hearing is now adjourned at 12 noon.

(Whereupon, at 12:00 noon, September 15, 1942 the hearing in the above-entitled matter was adjourned.)

1067

1068

1069

Order Closing the Taking of Testimony

UNITED STATES OF AMERICA

BEFORE

FEDERAL TRADE COMMISSION

Docket No. 4747

In the Matter

1070

of

A. P. W. PAPER COMPANY, INC.,
a corporation.

IT IS ORDERED that hearings for the purpose of taking testimony and receiving evidence in this cause be and the same are hereby concluded, and the taking of said testimony and the receipt of said evidence is hereby closed.

Given at Washington, D. C., this 30th day of November, 1942.

1071

MILES J. FURNAS
Miles J. Furnas,
Trial Examiner.

1072

(PHOTOSTAT)

(Allow One Page)

Commission's Exhibit 1

Commission's Exhibit 2

Commission's Exhibit 3

1073

Commission's Exhibit 4

Commission's Exhibit 5

Commission's Exhibit 6

1074

Commission's Exhibit 1

RENEWED.

A. P. W. Paper Co. Inc., a Corporation of New York, by change of name.

FEDERAL TRADE COMMISSION
Docket No. 474 Commission's Exhibit No. 1
IN THE MATTER OF A.P.W. Paper Co
DATE 6/3/42 WITNESS Galveston
REPORTER: E. Johnson

UNITED STATES PATENT OFFICE.

ALBANY PERFORATED WRAPPING PAPER COMPANY, OF ALBANY, NEW YORK.

TRADE-MARK FOR PACKAGES OF TOILET-PAPER.

82,193. Statement and Declaration. **Registered June 13, 1911.**

Application filed December 16, 1908. Serial No. 39,370.

STATEMENT.

To all whom it may concern:

Be it known that the ALBANY PERFORATED WRAPPING PAPER COMPANY, a corporation organized under and pursuant to the laws of the State of New York, and having its principal offices and place of business at Cohoes, Montgomery, and North Lansing streets, in the city of Albany, county of Albany, in said State, has adopted for its use the trade-mark shown in the accompanying drawing.

The trademark has been used continuously in our business since the year 1897.

The class of merchandise to which this trademark is appropriated is Class 37, Paper and stationery, and the particular description of goods comprised in said class on which the trademark is used is packages of toilet paper.

The trademark is usually displayed on the packages by printing the same upon the wrappers of the packages. It is also employed by affixing the labels upon which such trademark appears upon the cases in which the packages are packed for shipment or by printing the mark directly upon such cases.

ALBANY PERFORATED WRAPPING PAPER COMPANY,
By SETH WHEELER,
President.

DECLARATION.

State of New York county of Albany ss.

SETH WHEELER, being duly sworn, deposes and says that he is the president of the corporation the applicant named in the foregoing statement; that he believes the foregoing statement is true; that he believes said corporation is the owner of the trademark sought to be registered; that no other person, firm, corporation, or association to the best of his knowledge and belief has the right to use said trademark either in the identical form or in any such near resemblance thereto as might be calculated to deceive; that the said trademark is used by said corporation in commerce among the several States of the United States, and particularly between the States of New York and Pennsylvania and between the United States and foreign nations, and particularly with Mexico; and that the description drawing and specimens presented truly represent the trademark sought to be registered.

SETH WHEELER.

Subscribed and sworn to before me this 10th day of December, 1908.

[L. S.] J. J. JANSEN,
Notary Public for and in the County of Albany.

Copies of this trade-mark may be obtained for five cents each, by addressing the Commissioner of Patents.

Commission's Exhibit 1

RENEWED

A. P. W. Paper Co., Inc., a Corporation of New York, by change of name.

TRADE-MARK.

ALBANY PERFORATED WRAPPING PAPER COMPANY.

FOR ROLLS OF TOILET PAPER.

APPLICATION FILED DEC. 16 1908.

82,193. Registered June 13, 1911.

RED CROSS

WITNESSES:
Symon Landsberg Jr
George L. Blume

PROPRIETOR
Albany Perforated Wrapping Paper Company
BY
Chapin Rumsey
ITS ATTORNEYS

Commission's Exhibit 2

Registered Mar. 13, 1934

Trade-Mark 311,124

FEDERAL TRADE COMMISSION
Docket No. 4747 Case No. ____
In the Matter of A P W Paper
Date 3/13/42 Witness Hollister
E Johnson

UNITED STATES PATENT OFFICE

A. P. W. Paper Company, Inc., Albany, N. Y.

Act of February 20, 1905

Application October 4, 1933, Serial No. 343,131

RED CROSS

STATEMENT

To the Honorable Commissioner of Patents

A. P. W. Paper Company, Inc., a corporation duly organized under the laws of the State of New York, and located and doing business at No. 1273 Broadway, in the city of Albany, county of Albany, and State of New York, has adopted and used the trade-mark shown in the accompanying drawing, for PAPER FOR TOILET PURPOSES—NAMELY, TOILET TISSUES AND PAPER TOWELS—in Class 37, Paper and stationery, and presents herewith five specimens showing the trade-mark as actually used by applicant upon the goods, and requests that the same be registered in the United States Patent Office in accordance with the act of February 20, 1905.

The trade-mark has been continuously used by applicant in its business since 1897.

Applicant is the owner of United States trade-mark registration No. 82,193, dated June 13, 1911, renewed June 13, 1931.

The trade-mark is applied to the goods by being imprinted on the wrappers in which they are sold.

The undersigned hereby appoints Fraser, Myers & Manley, said firm comprising Arthur C. Fraser, Eugene V. Myers, Franklin G. Manley and Louis E. Giles, as its members, of 170 Broadway, New York, N. Y., its attorneys, to prosecute this application for registration, with full power of substitution and revocation, to make alterations and amendments therein, to receive the certificate, and to transact all business in the Patent Office connected therewith.

[L. S.] A. P. W. PAPER COMPANY, INC.
By DWIGHT G. W. HOLLISTER,
Executive Vice President.

Commission's Exhibit 3

Registered Mar. 13, 1934 Trade-Mark 311,125

FEDERAL TRADE COMMISSION
Docket No. 4747 Commission's Exhibit No. 3
IN THE MATTER OF A. P. W. Paper Co.
DATE 6/18/42 WITNESS Hollister
REPORTER E. Johnson

UNITED STATES PATENT OFFICE

A. P. W. Paper Company, Inc., Albany, N. Y.

Act of February 20, 1905

Application October 4, 1933, Serial No. 342,123

STATEMENT

To the Honorable Commissioner of Patents:

A. P. W. Paper Company, Inc., a corporation duly organized under the laws of the State of New York, and located and doing business at No. 1273 Broadway, in the city of Albany, county of Albany, and State of New York, has adopted and used the trade-mark shown in the accompanying drawing, for PAPER FOR TOILET PURPOSES—NAMELY, PAPER TOWELS—in Class 37, Paper and stationery, and presents herewith five specimens showing the trade-mark as actually used by applicant upon the goods, and requests that the same be registered in the United States Patent Office in accordance with the act of February 20, 1905.

The trade-mark in its present form has been continuously used and applied to said goods in applicant's business since September 21, 1933.

The representation of the carton per se is disclaimed.

Applicant is the owner of United States trade-mark registrations as follows:—No. 82,193, dated June 13, 1911; renewed June 13, 1931; No. 297,632, dated September 20, 1932.

The trade-mark is applied to the goods by being imprinted on the wrappers in which they are sold.

The undersigned hereby appoints Fraser, Myers & Manley (said firm comprising Arthur C. Fraser, Eugene V. Myers, Franklin G. Manley, and Louis E. Giles as its members), of 170 Broadway, New York, N. Y., its attorneys, to prosecute this application for registration, with full power of substitution and revocation, to make alterations and amendments therein, to receive the certificate, and to transact all business in the Patent Office connected therewith.

A. P. W. PAPER COMPANY, INC.,
By DWIGHT G. W. HOLLISTER,
Executive Vice President.

Commission's Exhibit 4

"I've licked KITCHEN JITTERS!"

"UGH! GREASY POTS AND PANS! They used to be the worst job in the kitchen. And those greasy dish cloths! No wonder I had 'kitchen jitters!'"

"DAMP TOWELS—ROUGH HANDS After mopping up the stove, table, refrigerator and sink, my cloths were always damp—my hands were a sight!"

"RED CROSS TOWELS FREED ME of horrid jobs...of red, rough hands. Now I clean greasy pots and dishes *before* washing...mop up...dry my hands...then simply throw towels and care away!"

Down with "kitchen jitters!" Up with Red Cross Towels! Save your nerves...your hands ...your time...and your laundry money. Order two rolls of these strong, cloth-like, inexpensive towels from your grocer this very day!

29

Commission's Exhibit 5

"So long— KITCHEN JITTERS!"

"I JUST HATED GREASY PANS
his they had to be cleaned. My dish-
cloths were always a sight. I sure had a
bad case of 'kitchen jitters'."

"HANDS FROM WET TOWELS
Fr[illegible]ping damp towels to mop up
[illegible] refrigerator and sink, my poor
[illegible] red and rough."

"THANKS TO RED CROSS TOWELS
my messy kitchen jobs are easy and neat.
my hands stay soft and white. I clean
greasy dishes in jiffy—washing, mop up, dry
my hands then toss the towels away."

Chase those "kitchen jitters!" Make all kitchen clean-up jobs quick and easy. Let Red Cross Towels save time, laundry, hands. [illegible] Order a couple of rolls from your grocer today. They're strong, snow white, absorbent. And they cost so little you'll be amazed, really.

RED CROSS TOWELS are advertised in every neighborhood in the country.

These Red Cross Towel advertisements are delivered to the homes of your better customers and prospective customers through the pages of the Ladies' Home Journal.

[redacted]

LOCAL ADVERTISING
IN THE LADIES' HOME JOURNAL

So-called "national advertising" is — actually — local advertising.

It simply appears simultaneously in every other neighborhood.

The Ladies' Home Journal offers the very best kind of LOCAL advertising because it selects the better customers in every neighborhood.

Commission's Exhibit 5

Commission's Exhibit 6

A.P.W. PAPER COMPANY

INC.

MANUFACTURER of TOWELS, TOILET TISSUE AND OTHER HYGIENIC PRODUCTS

A.P.W.

ESTABLISHED 1877

ALBANY, N.Y.

FEDERAL TRADE COMMISSION
Docket No. 4747 Commission Exhibit No. 6
IN THE MATTER OF A.P.W. Paper Co.
DATE 6/13/42 WITNESS Hazlett
REPORTER Johnson

32

Commission's Exhibit 7 1075

Roll toilet tissue—Red Cross
filed separately
marked: 2-1

4747-1

Commission's Exhibit 8

Roll toilet tissue—Red Cross 1076
filed separately
marked: 2-2

4747-1

Commission's Exhibit 9

Pack toilet tissue—Red Cross 1077
filed separately
marked: 2-3

4747-1

1078 **Commission's Exhibit 10**

Roll paper towels—Red Cross
filed separately
marked: 2-4

4747-1

Commission's Exhibit 11

1079

Pack of paper towels—Red Cross
filed separately
marked: 2-5

4747-1

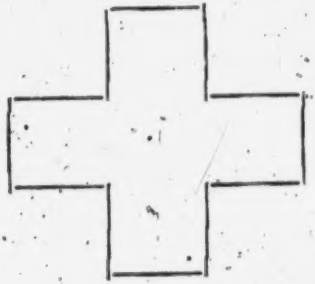
Commission's Exhibit 12

1080

Pack toilet tissue—Red Cross
filed separately
marked: 2-6

4747-1

Commission's Exhibit 13 1081



THE AMERICAN NATIONAL RED CROSS 1082

Charter

By-Laws

Endowment Fund Regulations 1083

THE AMERICAN NATIONAL RED CROSS
WASHINGTON, D. C.

ARC 500
September, 1931

1084 *Commission's Exhibit 13*

THE AMERICAN NATIONAL RED CROSS

1085

Charter

By-Laws

Endowment Fund Regulations

1086

THE AMERICAN NATIONAL RED CROSS
WASHINGTON, D. C.

Commission's Exhibit 13 1087

THE CONGRESSIONAL CHARTER

Approved January 5, 1905

AN ACT to incorporate The American National Red Cross.

Whereas, on the twenty-second of August, eighteen hundred and sixty-four, at Geneva, Switzerland, plenipotentiaries respectively representing Italy, Baden, Belgium, Denmark, Spain, Portugal, France, Prussia, Saxony, and Wurttemberg and the Federal Council of Switzerland agreed upon ten articles of a treaty or convention for the purpose of mitigating the evils inseparable from war; of ameliorating 1088
the condition of soldiers wounded on the field of battle, and particularly providing, among other things, in effect, that persons employed in hospitals and in according relief to the sick and wounded and supplies for this purpose shall be deemed neutral and entitled to protection; and that a distinctive and uniform flag shall be adopted for hospitals and ambulances and convoys of sick and wounded and an arm badge for individuals neutralized; and

Whereas, said treaty has been ratified by all of said nations, and by others subsequently, to the number of forty-three or more, including the United States of America; and

1089

Whereas, the International Conference of Geneva of eighteen hundred and sixty-three recommended "that there exist in every country a committee whose mission consists in cooperating in times of war with the hospital service of the armies by all means in its power"; and

Whereas, a permanent organization is an agency needed in every nation to carry out the purposes of said treaty, and especially to secure supplies and to execute the humane objects contemplated by said treaty, with the power to adopt and use the distinctive flag and arm badge specified by said

treaty in article seven, on which shall be the sign of the Red Cross, for the purpose of cooperating with the "Comité International de Secours aux Militaires Blessés" (International Committee of Relief for the Wounded in War); and

Whereas, in accordance with the requirements and customs of said international body, such an association adopting and using said insignia was formed in the city of Washington, District of Columbia, in July, eighteen hundred and eighty-one, known as "The American National Association of the Red Cross," re-incorporated April seventeenth,
1091 eighteen hundred and ninety-three, under the laws of the District of Columbia, and re-incorporated by Act of Congress in June, nineteen hundred; and

Whereas, it is believed that the importance of the work demands a repeal of the present charter and a re-incorporation of the society under Government supervision; Now therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Clara Barton, Hilary A. Herbert, Thomas F. Walsh, Charles C. Glover, Charles J. Bell, Mabel T. Boardman, George Dewey, William R. Day, Nelson A. Miles, James Tanner,
1092 William K. Van Reypen, John M. Wilson, Simon Wolf, James R. Garfield, Gifford Pinchot, S. W. Woodward, Mary A. Logan, Walter Wyman, of Washington, District of Columbia; George H. Shields, of Missouri; William H. Taft, F. B. Loomis, Samuel Mather, of Ohio; Spencer Trask, Robert C. Ogden, Cleveland H. Dodge, George C. Boldt, William T. Wardwell, John G. Carlisle, George B. McClellan, Elizabeth Mills Reid, Margaret Carnegie, of New York; John H. Converse, Alexander Mackay-Smith, J. Wilkes O'Neill, H. Kirke Porter, of Pennsylvania; Richard Olney, W. Murray Crane, Henry L. Higginson, William Draper, Frederick H. Gillett, of Massachusetts; Marshall Field, Robert T. Lincoln, Lambert

Tree, of Illinois; A. C. Kaufman, of South Carolina; Alexander W. Terrel, of Texas; George Gray, of Delaware; Redfield Proctor, of Vermont; John W. Foster, Noble C. Butler, Robert W. Miers, of Indiana; John Sharp Williams, of Mississippi; William Alden Smith, of Michigan; Horace Davis, W. W. Morrow, of California; Daniel C. Gilman, Eugene Levering, of Maryland; J. Taylor Ellyson, of Virginia; Daniel R. Noyes, of Minnesota; Emmanuel Fiske, Marshall Fiske, of Connecticut; together with five other persons to be named by the President of the United States, one to be chosen from each of the Departments of State, War, Navy, Treasury, and Justice, their associates and successors, are hereby 1094 created a body corporate and politic in the District of Columbia.

SECTION 2. That the name of this corporation shall be "The American National Red Cross," and by that name shall have perpetual succession, with the power to sue and be sued in courts of law and equity within the jurisdiction of the United States; to have and to hold such real and personal estate as shall be deemed advisable and to accept bequests for the purposes of this corporation hereinafter set forth; to adopt a seal and the same to alter and destroy at pleasure; and to have the right to have and to use, in carrying out its 1095 purposes hereinafter designated, as an emblem and badge, a Greek red cross on a white ground, as the same has been described in the treaty of Geneva, August twenty-second, eighteen hundred and sixty-four, and adopted by the several nations acceding thereto; to ordain and establish by-laws and regulations not inconsistent with the laws of the United States of America or any State thereof, and generally to do all such acts and things (including the establishment of regulations for the election of associates and successors) as may be necessary to carry into effect the provisions of this Act and promote the purposes of said organization; and the cor-

1096 *Commission's Exhibit 13*

poration hereby created is designated as the organization which is authorized to act in matters of relief under said treaty. In accordance with article seven of the treaty, the delivery of the brassard allowed for individuals neutralized in time of war shall be left to military authority.

SECTION 3. That the purposes of this corporation are and shall be—

First. To furnish volunteer aid to the sick and wounded of armies in time of war, in accordance with the spirit and con-
1097 ditions of the conference of Geneva of October, eighteen hundred and sixty-three, and also of the treaty of the Red Cross, or the treaty of Geneva, of August twenty-second, eighteen hundred and sixty-four, to which the United States of America gave its adhesion on March 1st, eighteen hundred and eighty-two.

Second. And for said purposes to perform all the duties devolved upon a national society by each nation which has acceded to said treaty,

Third. To succeed to all the rights and property which have been hitherto held and to all the duties which have heretofore been performed by the American National Red Cross
1098 as a Corporation duly incorporated by Act of Congress, June sixth, nineteen hundred, which Act is hereby repealed and the organization created thereby is hereby dissolved.

Fourth. To act in matters of voluntary relief and in accord with the military and naval authorities as a medium of communication between the people of the United States of America and their Army and Navy, and to act in such matters between similar national societies of other governments through the "Comité International de Secours," and the Government and the people and the Army and Navy of the United States of America.

Fifth. And to continue and carry on a system of national and international relief in time of peace and to apply the same in mitigating the sufferings caused by pestilence, famine, fire floods, and other national calamities, and to devise and carry on measures for preventing the same.

SECTION 4 (*As amended June 23, 1910.*) That from and after the passage of this Act it shall be unlawful for any person within the jurisdiction of the United States to falsely or fraudulently hold himself out as or represent or pretend himself to be, a member of or an agent for The American National Red Cross for the purpose of soliciting, collecting, or receiving money or material or for any person to wear or display the sign of the Red Cross or any insignia colored in imitation thereof for the fraudulent purpose of inducing the belief that he is a member of or an agent for The American National Red Cross. It shall be unlawful for any person, corporation, or association other than The American National Red Cross and its duly authorized employees and agents and the Army and Navy sanitary and hospital authorities of the United States for the purpose of trade or as an advertisement to induce the sale of any article whatsoever or for any business or charitable purpose to use within the territory of the United States of America and its exterior possessions the emblem of the Greek Red Cross on a white ground, or any sign or insignia made or colored in imitation thereof, or of the words "Red Cross" or "Geneva Cross," or any combination of these words: *Provided, however*, That no person, corporation, or association that actually used or whose assignor actually used the said emblem, sign, insignia, or words for any lawful purpose prior to January fifth, nineteen hundred and five, shall be deemed forbidden by this Act to continue the use thereof for the same purpose and for the same class of goods. If any person violates the provisions of this section he shall be deemed guilty of a misde-

1102 *Commission's Exhibit 13*

meanor, and upon conviction in any federal court shall be liable to a fine of not less than one nor more than five hundred dollars, or imprisonment for a term not exceeding one year, or both, for each and every offense.

SECTION 5. That the governing body of the said American National Red Cross shall consist, in the first instance, of a central committee numbering eighteen persons, to be appointed in the following manner, namely: Six by the incorporators herein named and twelve by the President of the United States, one of whom shall be designated by the Presi-
1103 dent to act as chairman. It shall be the duty of the central committee to organize, with as little delay as possible, State and Territorial societies, including the District of Columbia, under such rules as the said committee may prescribe. When six or more State or Territorial societies have been formed thereafter the central committee shall be composed as follows: Six to be appointed by the incorporators, six by the representatives of the State and Territorial societies, at the annual meeting of the incorporators and societies, and six by the President of the United States, one of whom shall be designated by him as chairman and one each to be named by him from the Departments of State, War, Navy, Treasury, and Justice.

1104 The first six members of the central committee elected by the incorporators at the first annual meeting, and the first six members of the central committee elected by the State and Territorial delegates, shall, when elected, select by lot from their number two members to serve one year, two members to serve two years, and two members to serve three years, and each subsequent election of members shall be for a period of three years or until their successors are duly elected and quality. The six members of the central committee appointed by the President at the annual meeting shall serve for one year.

The President shall fill as soon as may be any vacancy that may occur by death, resignation, or otherwise, in the chairmanship or in the membership of the central committee appointed by him. And any vacancy that may occur in the six members of the central committee herein provided to be appointed by the incorporators or in the six to be appointed by the representatives of the State societies shall be filled by temporary appointments to be made by the remaining members of the six in which the vacancy or vacancies may occur, such appointees to serve until the next annual meeting.

1106

The central committee shall have power to appoint from its own members an executive committee of nine persons, five of whom shall be a quorum, who, when the central committee is not in session, shall have and exercise all the powers of the central committee. *(Executive committee membership fixed at nine by amendment of March 3, 1921.)*

The Secretary of War shall within thirty days after the passage of this Act call a meeting at a time and place to be designated by him, in the city of Washington of the incorporators hereunder, giving at least thirty days' notice thereof in one or more newspapers, and the annual meeting of said incorporators, their associates and successors, shall thereafter be held in said city on the first Tuesday after the first Monday in December, the first of said meetings to be held in December, nineteen hundred and five. Fifteen members shall constitute a quorum at any annual or special meeting.

1107

(The foregoing paragraph amended December 19, 1912, to read as follows:)

The annual meeting of said organization shall hereafter be held on the Wednesday preceding the second Thursday in the month of December in each and every year.

Voting by proxy shall not be allowed at any meeting of the incorporators, annual or special, nor at any meeting of

State or Territorial societies organized under the pro[illegible] of this charter.

SECTION 6. (*As amended February 27, 1917.*) That the said American National Red Cross shall as soon as practicable after the first day of July of each year make and transmit to the Secretary of War a report of its proceedings for the fiscal year ending June thirtieth next preceding including a full, complete and itemized report of receipts and expenditures of whatever kind, which report shall be audited by the War Department and a copy of said report
1109 shall be transmitted to Congress by the War Department.

SECTION 7. That Congress shall have the right to repeal, alter, or amend this Act at any time.

SECTION 8. (*Added by amendment of June 23, 1910.*) That the endowment fund of the American National Red Cross shall be kept and invested under the management and control of a board of nine trustees, who shall be elected from time to time by the incorporators and their successors, under such regulations regarding terms and tenure of office, accountability, and expense as said incorporators and successors shall prescribe.
1110

Commission's Exhibit 13 1111

THE BY LAWS

ORGANIZATION

SECTION 1

Central and Executive Committees

As provided in the Act of Congress approved January 5, 1905, all powers of government, direction and management conferred upon The American National Red Cross by that Act, which created this corporation, except only the control of the Endowment Fund, as provided in Section 2 of the amendment to the original Act, approved June 23, 1910, are lodged in the Central Committee of eighteen persons, six of whom are appointed by the President, six elected by the Incorporators, and six elected by the Delegates of the Chapters. 1112

The annual meeting of the Central Committee shall be held on the Wednesday preceding the second Thursday in December of each year in the city of Washington, the hour and place for such meeting to be designated by the Chairman of the Central Committee. Other meetings shall be held at the call of the Chairman. At any annual or special meeting of the Central Committee, ten members shall constitute a quorum. 1113

The Central Committee shall at its annual meeting appoint from its own members an Executive Committee of nine persons, five of whom shall be a quorum, which, when the Central Committee is not in session, shall have and exercise all the powers of the Central Committee. Vacancies on the Executive Committee occurring between annual meetings of the Central Committee may be filled by the Central Committee.

If at any time a meeting of the Central or Executive Committee seems necessary and because of absence, or for any other reason, the Chairman is unable or fails to call such

1114 *Commission's Exhibit 13*

meeting, then a meeting of the Central Committee may be held upon the call of three members of the Central Committee, or a meeting of the Executive Committee may be held upon the call of three members of the Executive Committee.

Five days' notice shall be given of meetings of the Central and Executive Committees, but in emergencies meetings of either Committee may be held upon such notice as circumstances permit: *Provided, however*, that failure to give aforesaid notice of any meeting of the Central or the Executive Committee shall not invalidate the proceedings of such meeting.

1115

SECTION 2

Incorporators

The persons named in Section 1 of the Act of Incorporation, with their successors, constitute a perpetual body. Any vacancy which may occur among the Incorporators shall be filled at the next annual meeting.

The annual meeting of the Incorporators shall be held on the Wednesday preceding the second Thursday in the month of December of each year, in the city of Washington, the hour and place for such meeting to be designated by the Chairman of the Central Committee. At that meeting they 1116 shall elect by a majority vote the members of the Central Committee who are to fill any vacancies in that Committee which, in pursuance of Section 5 of the Act of Incorporation, may be filled by the Incorporators. The members so elected shall serve for three years or until their successors are duly elected and qualified: *Provided, however*, that when vacancies occur in unexpired terms, members elected to fill such vacancies shall serve only until the expiration of said terms.

Fifteen members of the Incorporators shall constitute a quorum.

Special meetings of the Incorporators may be held upon the call of the Central Committee.

Commission's Exhibit 13

Fifteen days' notice of the annual or any special meeting of the Incorporators shall be given by mailing to the last known post office address of each Incorporator a copy of the call for such meeting. *Provided, however*, that failure to give the aforesaid notice shall not invalidate the proceedings of such meeting.

SECTION 3

Chapters

The Central Committee shall organize, under such rules as the said Committee may prescribe, local units of the Corporation within the States and Territories of the United States, to be designated as Chapters and to have such territorial jurisdiction as the Central Committee may prescribe. All funds and property coming into the custody of a Chapter or other local unit are subject to the control of the Central Committee.

SECTION 4

Delegates of Chapters

The annual meetings of the Delegates of the Chapters to elect members to represent the Chapters on the Central Committee shall be held in Washington on the Wednesday preceding the second Thursday of December of each year, the hour and place for such meeting to be designated by the Chairman of the Central Committee. Fifteen Delegates shall constitute a quorum.

Special meetings of the Delegates of the Chapters may be held upon the call of the Central Committee.

Fifteen days' notice of the annual or any special meeting of the Delegates of the Chapters shall be given by mailing to the last known post office address of each Chapter a copy of the call for such meeting: *Provided, however*, that failure to give the aforesaid notice shall not invalidate the proceedings of such meeting.

1120 *Commission's Exhibit 13*

SECTION 5

National Convention

There shall be held each year at the call of the Central Committee a National Convention of Chapter Delegates. The National Convention shall be the general advisory meeting of the Red Cross; it shall prescribe its own rules of procedure and choose its own officers and shall, by appropriate resolution, present to the Central Committee recommendations concerning the operations of the organization. A report of the
1121 action of the Central Committee with respect to such resolutions shall be presented at the next Annual Convention.

The National Convention shall make nominations for members of the Central Committee to represent the Chapters, and these nominations shall be presented at the formal Annual Meeting of the Delegates of the Chapters.

SECTION 6

President

The President of the United States shall, upon his acceptance, be ex-officio President of The American National Red
1122 Cross. He shall preside at the annual meetings and shall make such appointments and perform such duties as may be prescribed.

SECTION 7

Vice Presidents

In the event of the absence or inability of the President to discharge the duties of the position, one of the Vice Presidents shall exercise the functions of President.

Commission's Exhibit 13 1123

SECTION 8

Chairman

The Chairman of the Central Committee, appointed by the President of the United States as provided in the Charter, shall also be Chairman of the Executive Committee. He shall call all meetings of both Committees and be a member ex-officio of all other Committees appointed by the Central Committee. He shall be the executive head of the Corporation under the advice and direction of the Central Committee, and in emergencies, pending a meeting of the Central or 1124
Executive Committee, shall take such steps to meet the situation as to him seem wise and necessary. In major disasters and emergencies a meeting of the Central or Executive Committee shall be held as early as practicable.

SECTION 9

Elected Officers

At its annual meeting the Central Committee shall elect the following officers, who shall hold office for one year and until their successors are elected and qualified: 1125

Three Vice Presidents
Counselor
Treasurer
Secretary

SECTION 10

Counselor

The Counselor shall advise the Corporation upon such legal matters as may be referred to him by its officers.

1126 *Commission's Exhibit 13*

SECTION 11

Treasurer

The Treasurer shall receive and receipt for all moneys legacies and gifts from whatever source paid to the Corporation save such moneys as are, under the regulations of the Central Committee, to be in the custody of the Chapters or other local units. He shall keep a book of accounts, open at all reasonable times to the inspection of members. He shall recommend to the Central Committee the bank or banks for deposit, the rate of interest on bank balances, and propose the
1127 investment of the funds of the Red Cross, in such manner as may best serve the corporate interests. He shall disburse the funds of the Corporation and make advances of such funds for disbursement only on the approval of such persons as may be designated by the Central Committee, countersigned by such person or persons as may be designated by the Central Committee. The Treasurer's accounts shall be audited annually by the War Department.

One or more Assistant Treasurers may be appointed by the Central Committee, to assist the Treasurer in the discharge of his duties. The Treasurer may require from his assistants bonds for the lawful performance of their duties
1128 and the faithful accounting for all Red Cross moneys or other property in their hands, in amounts to be fixed by the Treasurer and with surety or sureties to his satisfaction. Vouchers covering disbursements by Assistant Treasurers shall receive such certification and approval as the Central Committee may direct.

SECTION 12

Secretary

The Secretary shall issue notices of all meetings; shall keep the minutes of all meetings of the Incorporators, the

Delegates of the Chapters, the Central Committee, and Executive Committee; shall have charge of the seal and corporation books; shall sign, with other officers, such instruments as require their signatures, and make such reports and perform such other duties as are incident to the office.

An Assistant Secretary may be appointed by the Central Committee, who, in the absence or inability of the Secretary to act, shall have all the powers and perform all the duties of the Secretary.

SECTION 13 1130

Vice Chairman

The Central Committee may appoint one or more Vice Chairmen with such authority and duties as the Central Committee may prescribe.

One of the Vice Chairmen in the absence or disability of the Chairman shall perform the executive duties of the Chairman, and the Vice Chairmen shall succeed to such authority in the order of their seniority as determined by the date of appointment unless otherwise ordered by the Central Committee.

SECTION 14 1131

War Council

In the event the United States shall be engaged in war, the President of the United States may appoint, upon the request of the Central Committee, a War Council consisting of such number as in his discretion seems proper, of which the Chairman and the Vice Chairmen of the Central Committee shall be ex officio members. Vacancies in or additions to the War Council, and the position of the Chairman thereof, shall be filled by appointment of the President of the United States.

During the period of such a war, and thereafter, until it shall be discontinued by action of the Central Committee, both the War Council as a body, and each of the members thereof, shall be vested with and shall exercise all such powers and rights as may be delegated by the Central Committee.

The War Council, subject to previous or subsequent approval by the Central Committee, may prescribe rules and regulations for the conduct of its business at meetings, and for concurrent action in writing without a meeting. It may determine what number, whether a majority, or more or less
1133 than a majority thereof, shall constitute a quorum.

During the period of such a war, and so long thereafter as the War Council shall be in existence, the War Council will keep the Central Committee informed as to all actions taken by the War Council.

SECTION 15

National Advisory Committee on Medical and Nursing Service

The Central Committee may appoint a National Committee on Red Cross Medical Service and a National Committee
1134 on Red Cross Nursing Service. The duties and terms of membership of these Committees shall be defined by the Central Committee. The Central Committee may authorize the creation of other national advisory committees in its discretion.

SECTION 16

Proxies

Voting by proxy shall not be allowed at any meeting of the Central Committee, the Executive Committee, the Incorporators or the Delegates of the Chapters.

Commission's Exhibit 13 1135

MEMBERSHIP

SECTION 17

Individual Membership

Individual membership in The American National Red Cross shall consist of eight classes. Contributions to the relief funds of the Red Cross cannot be credited as membership dues, but such dues must be paid for the specific purpose of obtaining membership. The eight classes of individual membership shall be as follows:

1136

(a) *Annual Membership*—Any citizen or resident of the United States or its dependencies may become a member of The American National Red Cross on application to the Central Committee or a Chapter and the payment of one dollar to the Treasurer of the Chapter in whose jurisdiction the applicant resides, or to the National Treasurer, and may continue such membership by the annual payment of the same amount. Unless he otherwise requests, any member of the Red Cross residing within the jurisdiction of a Chapter shall be presumed to affiliate with the Chapter and shall be required to pay his annual dues to the Chapter.

1137

(b) *Contributing Membership*—Any citizen or resident of the United States or of its dependencies may become a contributing member of The American National Red Cross on application to the Central Committee or a Chapter and the payment of five dollars per annum.

(c) *Sustaining Membership*—Any citizen or resident of the United States or of its dependencies may become a sustaining member of The American National Red Cross on application to the Central Committee or a Chapter and the payment of ten dollars per annum.

(d) *Supporting Membership*—Any citizen or resident of the United States or of its dependencies may become a sup-

1138 *Commission's Exhibit 13*

porting member of The American National Red Cross on application to the Central Committee or a Chapter and the payment of twenty five dollars per annum.

(e) *Life Membership*—Any citizen or resident of the United States or of its dependencies may become a life member of The American National Red Cross on application to the Central Committee or a Chapter and the payment of fifty dollars.

(f) *Patron Membership*—Any citizen or resident of the United States or of its dependencies may become a Patron
1139 of The American National Red Cross upon application to the Central Committee or a Chapter and the payment of one hundred dollars.

(g) *Nurses' Membership*—Any nurse enrolled in the Red Cross Nursing Service shall by such enrollment become a member of The American National Red Cross without payment of dues.

(h) *Honorary Membership*—Those who have rendered specially meritorious or distinguished service to the organization and have been approved for such distinction by the Central Committee shall become honorary members.

1140

SECTION 18

Junior Membership

Junior Membership in The American National Red Cross may be authorized under such regulations as may be prescribed by the Central Committee.

SECTION 19

Collective Membership

(a) *Societies of Nurses*—Any State or Territorial body of nurses which has been accepted by the Central Committee

shall be entitled to be represented by a delegate member at the National Convention.

(b) *Organizations of Physicians.* Any State or Territorial organization of physicians which has been accepted by the Central Committee shall be entitled to be represented by a delegate member at the National Convention.

The Central Committee may authorize the creation of other Collective Members in its discretion.

SECTION 20

1142

Termination of Membership

The Central Committee may, in its discretion and upon notice, terminate the membership of any individual or collective member.

FUNDS

SECTION 21

(a) *Endowment Fund.* The Endowment Fund shall consist of all life and patron membership dues, and all legacies, the use of which is not otherwise designated. 1143

(b) *Special Contributions.* The Red Cross will expend for the purposes indicated such contributions as it may accept and the residue of any such contributions shall be utilized for purposes similar to those for which they were originally donated.

(c) *General Fund.* Membership dues (except the portion of such dues authorized by the regulations of the Central Committee to be retained by the Chapters), interest on endowment and other funds and revenues as not otherwise directed shall be placed in the general fund.

1144 *Commission's Exhibit 13*

SECTION 22

Investment and Safe-Keeping of Funds

Except as provided in Section Two of the Act of June 23, 1910, the current funds of The American National Red Cross shall be deposited in such banks or other financial institutions as may be designated by the Central Committee, and such of these moneys as may not be required for current needs will be invested in securities in such manner as the Committee may direct, and the Central Committee shall prescribe suitable regulations for the safe-keeping of such securities.

1145

AMENDMENTS

SECTION 23

These By-Laws may be amended, repealed, or changed in whole or in part by the affirmative votes of ten members present at any annual meeting of the Central Committee, or at any special meeting of the Central Committee when it has been announced in the call or notice of such special meeting that changes in the By-Laws would be presented for consideration.

1146 REGULATIONS FOR THE MANAGEMENT AND CONTROL OF THE ENDOWMENT FUND

SECTION 1. (*a*) The Board of nine Trustees of the Endowment Fund required to be chosen by Section 8 of the Act to Incorporate The American National Red Cross, as amended by an Act of Congress, approved June 23, 1910, ought always to include the three public officers of the United States who, by regular appointment and confirmation, are in discharge of public duties as follows:

1. The Secretary of the Treasury.
2. The Treasurer of the United States.

Commission's Exhibit 13 1147

3. The officer of the United States Treasury Department who may from time to time be designated by the President of the United States as a member of the Red Cross Central Committee in pursuance of the last clause of Section 5 of the Act of Congress approved January 5, 1905.

The President of the Red Cross be and he is hereby requested to notify the incumbents of the above-named offices of their designation by the Board of Incorporators of the American Red Cross to fill for the terms of their incumbency of the United States offices held by them respectively the 1148
three vacancies that will exist in the Board of Trustees on January 1, 1913, and after the said date to give similar notice as vacancies may occur among the United States officers referred to.

(*b*) The terms of office of the six other members of the Board will be four years: *Provided*, That the terms of office of the three members who were elected by the Board of Incorporators on December 6, 1910, to serve for four years shall be so limited that their terms will expire December 31, 1914, and the terms of office of the three members who were elected on December 6, 1910, to serve for six years will expire December 31, 1916. And *Provided further*, That if any 1149
vacancy shall occur among the non-official members of the Board, it will be filled for the time that may elapse before the next meeting of the Incorporators in the manner following:

To each of the Incorporators there will be sent by the President of the Red Cross a letter, directed to their last known post-office address, announcing the existence of a vacancy in the Board of Trustees and proposing the name of a person to fill the vacancy provisionally. If a majority of the members of the Board shall approve the proposal submitted, the President of the Red Cross is requested to notify

the person whose appointment has been agreed to by at least a majority of the Incorporators that he has been appointed by the Board of Incorporators to fill the vacancy in the Board of Trustees on Red Cross Endowment until such time as his successor shall have been duly elected and qualified. And the Chairman of the Board of Trustees will receive due notification by the President of the Red Cross of any appointment made in pursuance of this regulation.

(c) The said Board of Trustees shall select its own chairman, secretary and treasurer. It shall hold meetings
1151 from time to time upon the call of the chairman or the secretary, and the secretary shall call a meeting at any time when so requested in writing by any two members of the Board. The secretary shall give at least two days' previous notice of all meetings of the Board to the members thereof, either personally or by notice in writing mailed to each member of the Board at his last known post-office address, but such notice may be waived by any member and the attendance of any member at a meeting shall be taken as a waiver of notice of such meeting.

SECTION 2. All funds constituting a part of the Endowment Fund shall be invested in such property as shall from
1152 time to time be directed by a vote of, or approved in writing by, at least a majority of the whole Board of Trustees.

Securities in which endowment funds may be invested or which may constitute a part of the Endowment Fund, shall be kept by the Treasurer in safe deposit vaults, access to which shall be had only by the Treasurer or by any two members of the Board of Trustees. Such securities shall be so kept by the Treasurer under such rules and regulations as the Board of Trustees may from time to time adopt.

All moneys in the Endowment Fund shall be kept by the Treasurer under such rules and regulations as the Board of Trustees may from time to time adopt. Such moneys may

be withdrawn from such Endowment Fund upon check, order or signature of the Treasurer only, pursuant to specific resolutions or written directions of the Board of Trustees. *Provided, however*, that moneys representing the income of and from endowment funds may be withdrawn upon such check, order or signature of the Treasurer and paid to the General Fund of The American National Red Cross without such specific resolution or direction.

The Board of Trustees, in the investment and custody of any property received as a donation by The American National Red Cross, shall strictly comply with any limitations or requirements of the donor. Except as restricted by the terms of any donation, the Board of Trustees is empowered to invest any portion of the Endowment Fund in real or personal property, and to resell, transfer and convey any such property, and to lease any real property at any time held for such term and on such conditions as to the Board of Trustees may seem expedient.

Specific resolutions or directions of the Board of Trustees within the limitations of these regulations shall be either in the form of a majority vote of the Board at a meeting, or in the form of written approvals signed by at least a majority of the whole Board of Trustees.

The Board of Trustees shall, between the first and fifteenth days of November in each year, report fully in writing to the President of The American National Red Cross all of its transactions during the preceding fiscal year of The American National Red Cross as same may now or hereafter be fixed by law and shall at any time, upon written request of the President, Vice President or Treasurer of The American National Red Cross, furnish a report of the state of the Endowment Fund, and as to any investment thereof.

SECTION 3. The capital of the Endowment Fund, consisting of all funds and other property given to the Red Cross

for its endowment, shall be held inviolate and used, applied, invested, sold and reinvested only as provided by Section 2 of these regulations. The interest earned by the securities and other property belonging to the American Red Cross held in the name of and by the Board of Trustees for the Endowment Fund, including interest on bank balances of said earnings, shall be available for expenditure in relief work and for the current expenses of the Red Cross and are subject to call at any time for these purposes by the Chairman of the Central Committee of the Red Cross when duly authorized; and any balance of any year's accumulation of said earnings shall be available for the same objects and paid to the said Chairman at the close of each year.

SECTION 4. The members of the Board shall receive no compensation for their services, but shall be reimbursed by the Treasurer of The American National Red Cross for their actual expenses incurred in the discharge of their duties hereunder, such expenses to be approved by the Treasurer of The American National Red Cross.

SECTION 5. The Board shall be empowered to appoint a clerk, who shall receive such compensation as the Board may fix with the approval of the President of The American National Red Cross.

Commission's Exhibit 13 1159

The proper form for making a gift to be placed in the Endowment Fund of The American National Red Cross is as follows:

"I give, devise and bequeath to The American National Red Cross the sum of . . . . . Dollars," (or otherwise describe the gift.)

An endowment may be given to be held as a memorial under a name designated by the donor.

1160

1161

1162 **Commission's Exhibit 14-A and 14-B**

(Copy)

FRASER, MYERS & MANLEY
ATTORNEYS AND COUNSELORS AT LAW
170 Broadway, New York

September 29, 1932

H. J. Hughes, Esq.,
Legal Adviser, The American National Red Cross,
Washington, D. C.

Dear Mr. Hughes:

I have finally received my client's reaction to the suggestion that it voluntarily abandon the use of the Red Cross
1163 trade mark in association with its products.

After careful consideration on the part of the various officials of the Company, it has been definitely decided that under no circumstances can it voluntarily abandon the use of this trade mark. The Company has built up a very valuable goodwill under the mark and to voluntarily abandon the use of the mark at either the present time or as you suggest within the next year or two would deprive it of an annual business of many thousands of dollars. The Company has spent a considerable sum in making known its right to the use of this trade mark and because of such extensive advertising and use the mark is now considered to
1164 be a valuable asset.

My client has assured me that if it were a mark of more recent adoption, or one which could be readily replaced, it would feel differently about the matter. It could not, however, overlook the losses which would be incurred by it, should it grant your request.

My client feels as I do that the Society is in no way injured by the use of this mark.

I personally feel that you in fairness will appreciate my client's position in this matter.

With kindest personal regards, I am

Very truly yours,

JTF/HJC

Commission's Exhibit 15

II.

The American Association for the Relief of the Misery of Battle Fields.

Letter of Rev. Henry W. Bellows, D. D., President, to M. J. Henri Dunant, Secretaire du "Comite Internationale de Secours aux Militaires Blesses."

[SEAL OF AMERICAN ASSOCIATION FOR RELIEF OF MISERY OF BATTLEFIELDS]

[SEAL OF AMERICAN RED CROSS LIBRARY]

New York, 1866

1168

Commission's Exhibit 16

THE AMERICAN ASSOCIATION.

THE AMERICAN ASSOCIATION OF THE RED CROSS.

ORIGINAL INCORPORATION.

The undersigned, all of whom are citizens of the United States of America, and a majority of whom are citizens of the District of Columbia, desirous of forming an association for benevolent and charitable purposes to co-operate with the Comité International de Secours aux Militaires Blessés of Geneva, Switzerland, do, in pursuance of sections 545, 546,
1169 547, 548, 549, 550 and 551 of the Revised Statutes of the United States, relating to the District of Columbia, make, sign and acknowledge these:

ARTICLES OF INCORPORATION.

1.

The name of this association shall be the American Association of the Red Cross.

2.

The term of its existence shall be for twenty (20) years.
1170

3.

The objects of this association shall be:

"1st. To secure by the United States the adoption of the Treaty of August 22, 1864, between Italy, Baden, Belgium, Denmark, Holland, Spain, Portugal, France, Prussia, Saxony, Wurtemberg, and the Federal Council of Switzerland.

2d. To obtain recognition by the Government of the United States, and to hold itself in readiness for communicating therewith at all times, to the end that its purposes may be more wisely and effectually carried out.

Commission's Exhibit 16. 1171.

"3d. To organize a system of national relief and apply the same in mitigating the sufferings caused by war, pestilence, famine and other calamities."

4th. To collect and diffuse information touching the progress of mercy, the organization of national relief, the advancement of sanitary science, and their application.

5th. To co-operate with all other similar national societies for the furtherance of the articles herein set forth, in such ways as are provided by the regulations governing such co-operation.

1172

4.

The number of this association, to be styled the "Executive Board," for the first year of its existence, shall be eleven (11).

In witness whereof we have hereunto set our hands and seals at the city of Washington this first day of July, A. D. 1881.

1173

1174

Commission's Exhibit 17

THE RED CROSS.

CONSTITUTION.

Name; Location.

ARTICLE 1. This Association shall be known as the American Association of the Red Cross, with its office located at Washington, D. C., and shall consist of the subscribers hereunto, and such other persons as shall hereafter be elected to membership; and it shall constitute a Central National Association with power to organize state and territorial associations auxiliary to itself.

1175

Objects of Association.

ART. 2. The objects of the National Association are,

First, To secure the adoption by the Government of the United States of the Treaty of August 22, 1864.

Second, To obtain recognition by the Government of the United States, and to hold itself in readiness for communicating therewith at all times, to the end that its purposes may be more widely and effectually carried out.

Third, To organize a system of national relief and apply the same in mitigating the sufferings caused by war, pestilence, famine and other calamities.

1176

Fourth, To collect and diffuse information touching the progress of mercy, the organization of national relief, the advancement of sanitary science and hospital service, and their application.

Fifth, To co-operate with all other national societies, for the furtherance of the articles herein set forth, in such ways as are provided by the regulations governing such co-operation.

Commission's Exhibit 17.

1177

Duties.

ART. 3. This association shall hold itself in readiness in the event of war or any calamity great enough to be considered national, to inaugurate such practical measures, in mitigation of the suffering and for the protection and relief of sick and wounded, as may be consistent with the objects of the association as indicated in Article 2.

Officers.

ART. 4. The officers of this association shall consist of a president; first vice-president; other vice-presidents, not to exceed one from each State, Territory, and the District of Columbia; a secretary; treasurer; an executive board; a board for consultation, which shall consist of the following officers of the United States Government, viz: The President and his cabinet: General of the Army; Surgeon General; Adjutant General, and Judge Advocate General, and such other officers as may hereafter be deemed necessary.

1178

1179

1180

Commission's Exhibit 17-B

CERTIFICATE OF INCORPORATION, THE AMERICAN NATIONAL RED CROSS No. 2359. RECORDED APRIL 29, 1893, 11 A. M.

Know all men by these presents, that we, Clara Barton, Julian B. Hubbell, Stephen E. Barton, Peter V. De Graw, and George Kennan, all being persons of full age, citizens of the United States, and a majority residents of the District of Columbia, being desirous of forming an association to carry on the benevolent and humane work of the Red Cross in accordance with the articles of the international treaty of Geneva, Switzerland, entered into on the 22d day of August 1864, and adopted by the Government of the United States on the 1st day of March 1892, and also in accordance with the broader scope given to the humane work of said treaty by The American Association of the Red Cross, and known as the American amendment, whereby the sufferings incident to great floods, famines, epidemics conflagration, cyclones, or other disasters of national magnitude may be ameliorated by the administration of necessary relief; and being desirous of containing the noble work heretofore performed by the American Association of the Red Cross, incorporated in the District of Columbia for the purpose of securing the adoption of the said treaty of Geneva by the United States, for benevolent and charitable purposes, and to cooperate with the Comité International de Secours aux Militaires Blessés;

1181

1182

Now, therefore, for the purpose of creating ourselves, our associates and successors, a body public and corporate in name and in fact, we do hereby associate ourselves together under and by virtue of sections 545, 546, 547, 548, 549, and 550 of the Revised Statutes of the United States relating to the District of Columbia, as amended and in force at this time; and do make, sign and acknowledge this certificate of incorporation as follows, to wit:

Commission's Exhibit 17-B 1183

First. The name by which this association shall be known in law is "The American National Red Cross."

Second. The principal office of the association shall be in the city of Washington, District of Columbia.

Third. The term of its existence shall be 50 years, from the date of this certificate.

Fourth. The objects of this association shall be, in addition to the purpose set forth in the above preamble as follows, to wit:

1. To garner and store materials, articles, supplies, 1184
moneys, or property of whatsoever name or nature, and to maintain a system of national relief and administer the same in the mitigation of human suffering incident to war, pestilence, famine, flood, or other calamities.

2. To hold itself in readiness for communication and cooperation with the Government of the United States, or any department thereof, or with the Comité International de Secours aux Militaire Blessés, of Geneva, Switzerland, to the end that the merciful provisions of the said international treaty of Geneva may be more wisely and effectually carried out.

3. To collect and diffuse information concerning the 1185
progress and application of mercy, the organization of national relief, the advancement of sanitary science, and the training and preparation of nurses or others necessary in the application of such work.

4. To carry on and transact any business, consistent with law, that may be necessary or desirable in the fulfillment of any or all of the objects and purposes hereinbefore set forth.

Fifth. The affairs and funds of the corporation shall be controlled and managed by a board of directors, and the number of the directors for the first year of the corporation's existence, and until their successors are lawfully elected and

qualified, is five, and their names and addresses are as follows, to wit:

CLARA BARTON,
Washington, D. C.

PETER V. DE GRAW,
Washington, D. C.

DR. JULIAN B. HUBBELL,
Washington, D. C.

DR. JOSEPH GARDNER,
Bedford, Ind.

1187 STEPHEN E. BARTON,
Newtonville, Mass.

The names and addresses of the full membership of the association, who shall be designated as charter members, are as follows, to wit: Clara Barton, Washington, D. C.; Adolphus S. Solomons, Washington, D. C.; Peter V. De Graw, Washington, D. C.; George Kennan, Washington, D. C.; Dr. Julian B. Hubell, Washington, D. C.; Col. Richard J. Hinton, Washington, D. C.; Mrs. Henry V. Boynton, Washington, D. C.; Rev. Rush R. Shippen, Washington, D. C.; Rev. Alexander Kent, Washington, D. C.; Rev. William Merritt Ferguson, Washington, D. C.; General Edward Whitaker, Washington, D. C.; Joseph E. Holmes, Washington, D. C.; Mrs. Peter V. De Graw, Washington, D. C.; Mrs. George Kennan, Washington, D. C.; Mrs. R. Delaven Mussey, Washington, D. C.; Mrs. Omar D. Conger, Washington, D. C.; William Lawrence, Beliefontaine, Ohio; Walter P. Phillips, New York, N. Y.; Joseph Sheldon, New Haven, Conn.; John H. Van Wormer, New York, N. Y.; Albert C. Phillips, New York, N. Y.; Mrs. Walter D. Phillips, New York, N. Y.; Mrs. Joseph Gardner, Bedford, Ind.; Dr. Joseph Gardner, Bedford, Ind.; Miss Mary E. Almon, Newport, R. I.; Dr. Lucy Hall-Brown, Brooklyn, N. Y.; John H. Morlan, Bedford, Ind.; and Stephen E. Barton, Newtonville, Mass.

1188

But the corporation shall have power to increase its membership in accordance with by laws to be adopted.

Commission's Exhibit 18

THE RED CROSS.

ISSUED BY THE

American National Red Cross.

WASHINGTON, D. C.

1917

FEDERAL TRADE COMMISSION

Docket No. 747 Commission's Exhibit No. 18

IN THE MATTER OF P. W. Paper

DATE 6-30-42 WITNESS Roe

REPORTER Walker

52

ETHEL F. FISHER & ASSOCIATES, INC.

Commission's Exhibit 19

THE RED CROSS

A HISTORY
OF THIS REMARKABLE

INTERNATIONAL MOVEMENT IN THE INTEREST OF HUMANITY

BY

CLARA BARTON

PRESIDENT AND TREASURER OF THE AMERICAN NATIONAL RED CROSS

A VIVID AND AUTHORITATIVE ACCOUNT OF RELIEF FROM SUFFERING BY WAR, PESTILENCE, FAMINE, FLOOD, FIRES, AND OTHER NATIONAL CALAMITIES

AMERICAN NATIONAL RED CROSS

WASHINGTON, D. C., U. S. A.

FEDERAL TRADE COMMISSION
DOCKET 6947
IN THE MATTER OF
DATE 5-20-64 WITNESS Walker
REPORTER
DUNLAP & FERGUSON & ASSOCIATES INC.

Commission's Exhibit 20

FEDERAL TRADE COMMISSION

Docket No. 4747 Commission's Exhibit No. 20

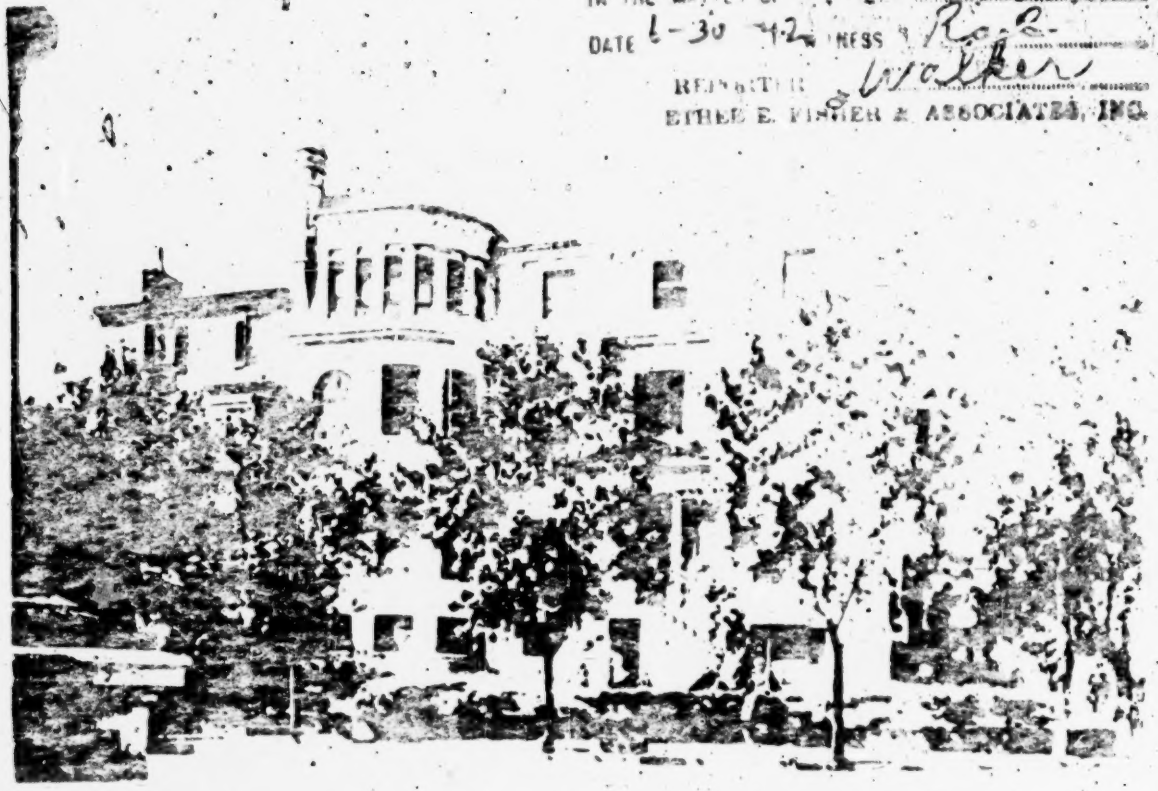
IN THE MATTER OF A. P. W. Paper Co.

DATE 6-30-42 WITNESS Ray Walker

REPORTER

STENOTYPE REPORTING ASSOCIATES, INC.

FEDERAL TRADE COMMISSION
Docket No. 847 COMMISSION'S EXHIBIT No. 21
IN THE MATTER OF A. P. W. Paper Co.
DATE 1-30-42 WITNESS Rose Walker
REPORTER
ETHEL E. FISHER & ASSOCIATES, INC.



Commission's Exhibit 21

55

Commission's Exhibit 22

Commission's Exhibit 23

Commission's Exhibit 24

BOYD'S

DIRECTORY

District of Columbia,

GOVERNMENTS, INSTITUTIONS and TRADES

BUSINESS DIRECTORY

AND A

CONGRESSIONAL DIRECTORY.

SEE PAGE ELEVEN FOR NAMES NOT FOUND IN THIS SECTION HERE.

WM. H. BOYD, COMPILER

1885.

☞ TO FIND A NAME YOU MUST KNOW HOW TO SPELL IT. ☜

WASHINGTON, D. C.

J. BRADLEY ADAMS, 814 F ST. N.W. WM. BALLANTYNE & SON, 428 SEVENTH ST. N.W.

PRICE, $5.00.

Entered according to Act of Congress, in the year 1885, by Wm. H. Boyd, in the Office of the Librarian of Congress, at Washington, D. C.

28

Metropolitan [illegible] Association; [illegible] Sackett, sec; [illegible] sec; [illegible]

Woodward Road and Gun Club; [illegible] president; H F Dering, vice-president; W L Bellamy, secretary; Thomas Russell, treasurer; executive committee, the president, secretary and treasurer; and F B Mercure and Lee Woodbury; club house and grounds in Woodridge, county, Md.

Washington Canoe Club; [illegible] house 3240 Water, Georgetown; organized June 20, 1894; officers: Rev Thos S Wenyon, commodore; H H Dodge, vice-commodore; H Hoode, secretary and treasurer; Arthur Bentzing, measurer.

League of American Wheelmen, District of Columbia Division; chief consul, E T Pettingill; representative, Geo F Emmons; vice pres, J C V Smith; sec, Louis Fiemer; treas, Frank T Hastings; office of secretary, 14th and F.

Washington Cycle Club; house 1023 12th; pres, E T Pettingill; vice-pres, H H Bliss; sec, John H Hawkes; treas, Wm T Filer; chronicler, F W Moulton; capt, L M Kruger; 1st lieut, A P Crenshaw; 2d lieut, Lewis Fiemer.

CHARITABLE AND BENEVOLENT.

American Association of the Red Cross, for the relief of suffering by war, pestilence, famine, flood, fires, and other calamities of sufficient magnitude to be deemed nationalin extent. The association and its auxiliary societies operate under the provisions of the Geneva Treaty promulgated at Geneva, Switzerland, in 1864, and signed since then by all the nations of the earth, including the United States, which gave in its adhesion, through President Arthur, in March, 1882; chairman board of consultation, Chester A Arthur; trustees, Charles J Bolger, Robert T Lincoln, George B Loring; Executive officers: Pres, Clara Barton, vice-pres, W J Lawrence, A S Solomons; general sec, Clara Barton; treas, George Kennan; general field agent, Dr J B Hubbell; special agent for the Lower Mississippi valley, F K Smith; mayd, special judge advocate, Joseph Sheldon.

American Colonization Society, 450 Pa av nw; pres, Hon John M B Latrobe; sec and treas, William Coppinger; Executive committee; chairman, Rev Wm Lindsly, M D, L L D; Hon Peter Parker, Judge Charles C Nott, Reginald Fendall, Esq, Rev Thomas C Addison, D D, Rev Byron Sunderland, D D and Judge Alexander S Hagner.

Associated Charities of the District of Columbia; pres, A S Solomons; general sec, L S Emery; office 934 G nw; open daily (except Sunday) from 10 a m to 4:30 p m; Board of Managers: Pres, James B Edmonds, Commissioner of the District; John Eaton, Commissioner of Education; the Surgeon-General of the Army, W McK Dye, asst surgeon, Dr Smith Townshend, health officer, sec, L S Emery; treas, M G Emery.

Elected members of the Board: A S Solomons, Rev W A Bartlett, John T Mc[illegible], A M Gangewer, Dr R H Donaldson, H W [illegible], Enoch Pratt, F B Barton, Rev J S Williams, Thos J Fisher, James F Fitch, A P Forbes, J H Voorhees, Mrs W B Snell, Mrs A J Barker, and Mrs M H Totten.

Also one representative from each subscribing and recognized co-operating organization.

The Charity Organization Society of the District of Columbia, central office room 41 Pa av, 3d nw; pres, A S Pratt; vice-presidents, B Pickman Mann, Rev J G Butler, treas, Geo Rommel jr; sec, Robt B Sewall; board of managers, A S Pratt, B Pickman Mann, Rev J G Butler, Sara A Spencer, Sarah A Mayo, Emma Poesche, Samuel S Shedd, Geo Rommel jr, Jno F Cook, James W Graham, F Kurtz Johnson, Rev A Floridus Steer, E Ross, Perry Samuel, W Curriden Robb, B Russell, Ephonzo Youngs, Stilson Hutchins, Geo F Thomas, Simon Wolf, Chas C Purcell, M D Helm, James B Philp, J Calcott Pratt, W B Speare; auditors Simon Wolf, James B Philp, J Calcott Pratt.

Algemeiner Arbeiter Unterstuetzungs Verein, 726 7th nw; every 1st Tuesday in each month; sec, George F Kozel, 1813 14th nw.

Bakers' Benevolent Association; pres, Hugo Schulz; vice-pres, L Dorr; fin sec, Henry Gross; rec sec, Paul Burk; treas, Chas Schneider; executive committee, John Banf, Chas Schaefer, Henry Arnolt, Herman Roth, and Chas Stein.

Franklin Mutual Relief Association; meets 2d Monday, monthly, at St Joseph's hall, 8th st nw.

German Benevolent Society; pres, A Römer; vice-pres, Frederick Volk; sec, Peter A Mattern; treas, Charles Schneider; meets at German hall, 604 11th nw, 1st Monday in each month.

German Evangelical Benefactal Association; pres, William Kettler; vice-pres, John Vogler; sec, William Scherger; treas, Eckert J Sachs; founded 1847; meets at German hall, 606 11th nw, 2d Tuesday in each month.

Grueth Verein (Swiss Association); meets at St George's hall; pres, Henry Pfister; vice-pres, Rudolph Hasler; rec sec, Chas Gottlieb Jenkins; fin sec, Jacob Mueller; treas, Joseph Brassel.

Hebrew Burial Society; pres, Louis Rosenberg; treas, Henry Frank.

Italian Benevolent Society; pres, Ignasio Tinaglio; vice-pres, Felix Cristofalo; rec sec, C P Rallo; fin sec, Dominic Cristofalo; treas, Stefano G Casasco; meets second Sunday in the month at Cosmopolitan hall, 918 E nw.

Ladies' Lutheran Church Society for the relief of the poor; pres, Mrs Barton; sec, Mrs Fries; meets at German hall, 606 11th nw, every third Wednesday in each month.

Pennsylvania Free Kindergarten, Mrs Louisa Pollock, principal; Mrs Josephine, teacher, 934 G nw.

(PHOTOSTAT)

(Allow One Page)

Commission's Exhibit 18

Commission's Exhibit 19

Commission's Exhibit 20

Commission's Exhibit 21

Commission's Exhibit 22

Commission's Exhibit 23

Commission's Exhibit 24

Commission's Exhibit 25

1192 **Respondent's Exhibit 1-A—1M**

PETITION, STATEMENT

and

POWER OF ATTORNEY

Hon. Commissioner of Patents,
Washington, D. C.

Sir:—

A. P. W. Paper Company, Inc., a corporation duly organized under the laws of the State of New York, and lo-
1193 cated and doing business at No. 1273 Broadway, in the City of Albany, County of Albany, and State of New York, has adopted and used the trade mark shown in the accompany [Paper for Toilet Purposes, namely Toilet Tissues and Paper Towels] in pencil.
ing drawing for [Toilet Paper and Paper Towels,] in Class 37, Paper and Stationery, and presents herewith five specimens showing the trade mark as actually used by applicant upon the goods, and requests that the same be registered in the United States Patent Office in accordance with the Act of February 20, 1905.

The trade mark has been continuously used by applicant

1194 [in its business since 1897] in pencil.

[on Toilet Paper since 1897, and on Paper Towels since September 21, 1933.]

Applicant is the owner of United States trade mark registration No. 82,193, dated June 13, 1911, renewed June 13, 1931.

The trade mark is applied to the goods by being imprinted on the wrappers in which they are sold.

The undersigned hereby appoints Fraser, Myers & Manley (said firm comprising Arthur C. Fraser, Eugene V. Myers, Franklin G. Manley, and Louis E. Giles as its mem-

bers), of 170 Broadway, New York, N. Y., its attorneys, to prosecute this application for registration, with full power of substitution and revocation, to make alterations and amendments therein, to receive the certificate, and to transact all business in the Patent Office connected therewith.

SIGNED at Albany, New York, this 29th day of September, 1933.

A. P. W. PAPER COMPANY, INC.

By (sgd.) DWIGHT G. W. HOLLISTER,
Executive Vice President

(Corporate Seal)

Address only
COMMISSIONER OF PATENTS
WASHINGTON, D. C.

U. S. PATENT OFFICE

SERIAL NUMBER
342121
SERIES OF 1905
Oct 4-33
(Filing date)

Be sure to give the SERIAL NUMBER as well as date of filing and name of applicant when inquiring about this application.

APPLICANT A P W PAPER CO INC
ALBANY N Y

GOODS TOILET PAPER & PAPER TOWELS

12812

FRASER MYERS & MANLEY
170 BROADWAY
NEW YORK N Y

The petition, declaration, statement, drawing, specimens, and fee of FIFTEEN DOLLARS of your TRADE-MARK, above identified, are received.

Respectfully,

CONWAY P. COE,

11—8874
FORM 0414

(SEE OTHER SIDE)

Commissioner of Patents

1198 *Respondent's Exhibit 1-A—1-M*

DECLARATION

STATE OF NEW YORK,
COUNTY OF ALBANY, } ss.:

Dwight G. W. Hollister, being duly sworn, deposes and says that he is the Executive Vice President of A. P. W. Paper Company, Inc., the applicant named in the foregoing statement; that he believes the foregoing statement is true; that he believes said corporation is the owner of the trade mark sought to be registered; that no other person, firm, corporation, or association, to the best of his knowledge and
1199 belief, has the right to use said trade mark in the United States, either in the identical form or in any such near resemblance thereto as might be calculated to deceive; that said trade mark is used by said corporation in commerce among the several States of the United States; that the description and drawing presented truly represent the trade mark sought to be registered; and that the specimens show the trade mark as actually used upon the goods.

(sgd.) DWIGHT G. W. HOLLISTER

SUBSCRIBED and sworn to before me, a Notary Public, this
1200 29th day of September, 1933.

(sgd.) SPENCER C. GUNN,
Notary Public.

(Notarial Seal)

Respondent's Exhibit 1A. 1M 1291

Letterhead of
DEPARTMENT OF COMMERCE
UNITED STATES PATENT OFFICE
WASHINGTON

Applicant: A. P. W. Paper Company, Inc.
Ser. No. 342,121
Filed Oct. 4, 1933
For Trade Mark

1292

FRASER, MYERS & MANLEY,
170 Broadway,
New York, N. Y.

Registration is refused on paper towels on the ground that the mark presented was not used on such goods until after the Act incorporating the Red Cross Society. (Section 5 b of the Act of February 20, 1905.)

(Red Cross, etc.)

1293

1204 *Respondent's Exhibit 1-A—1M*

A. P. W. PAPER COMPANY, INC. T.M. 342,121

Trade Mark. October 4, 1933

AMENDMENT

(1)

Hon. Commissioner of Patents,

Sir:—

Responsive to the Official letter of October 27, 1933, the
1205 above-identified application is hereby amended as follows:—

STATEMENT:—

Line 6, delete "Toilet Paper and Paper Towels," and substitute in lieu thereof . . . Paper for Toilet Purposes, namely, Toilet Tissues and Paper Towels, . . .

Lines 13 and *14*, after "plicant," delete "on Toilet Paper since 1897, and on Paper Towels since September 21, 1933, and substitute in lieu thereof . . . in its business since 1897. . . .

REMARKS

Pursuant to the conference had on November 24, 1933,
1206 with the Primary Examiner, as well as with the Examiner in charge of this particular application, reconsideration is respectfully requested.

While it is believed that the amendments made place this application in condition for publication, the Examiner's attention is directed to the fact that the Red Cross Act as originally enacted made no provision for the use of the words "Red Cross," or the Geneva Cross, by such persons, corporations, or associations that had actually used the words or insignia prior to the enactment of the Red Cross Act, approved January 5, 1905. Subsequently, on June 25, 1910, Congress, in order to preclude the prior Act of 1905

from being declared unconstitutional on the ground that it took away from such persons, corporations, or associations that had used the words or insignia prior to the enactment of the Act in 1905, the property right to so use the said words or insignia, passed an amendment to the Red Cross Statute, which specifically provided as follows:—

> "* * * That no person, corporation, or association that actually used or whose assignor actually used the said emblem, sign, insignia, or words for any lawful purpose prior to January fifth, nineteen hundred and five, shall be deemed forbidden by this Act to continue the use thereof for the same purpose and for the same class of goods."

Attention is directed to the language "no person, corporation, or association * * * shall be deemed forbidden to continue the use thereof for the same purpose and for the *same class of goods*." The Patent Office and the courts have all recognized that by the term "same class of goods" is meant goods of the same descriptive properties. The Patent Office has indicated that Toilet Paper and Paper Towels are goods of the same descriptive properties. Hence, they are goods of the same class. Furthermore, the trade in general as well as the purchasing public recognizes that Paper Towels and Toilet Paper or Toilet Tissue are goods of the same general class and that they are goods of the same descriptive properties. The same basic raw materials are used in the manufacture of Toilet Paper and Paper Towels. The goods are made by the same manufacturers and they are sold over the same counters. They are also included under the term "Toilet Papers" when used in a broad sense, that is, Paper for Toilet uses, and such Papers may be Toilet Tissues, Facial Tissues, Paper Towels, etc.

The fact must not be overlooked that the Red Cross Statute is unquestionably a criminal statute. The Act specifically provides:—

1210 *Respondent's Exhibit 4-A—IM*

"If any person violates the provision of this section he shall be deemed guilty of a misdemeanor, and upon conviction in any Federal Court shall be liable to a fine of not less than one or more than five hundred dollars, or imprisonment for a term not exceeding one year, or both, for each and every offense."

It being a criminal statute, "strict" and not "liberal" interpretation of the language used in the Act must be enforced.

The Act provides:—

1211 "* * * That no person, corporation, or association * * * shall be deemed forbidden to continue the use thereof for the same purpose and for the same class of goods."

In *William Waltke & Co. v. Gio. H. Schafer & Co.*, 263 Fed. 650, the Court of Appeals of the District of Columbia, in considering the right of the owner of a trade mark to extend the use of the mark, stated (p. 651):—

"The owner of a trade mark has the right not only to its exclusive use on goods which he has manufac-
1212 tured, but also on goods which he may afterwards produce, if they belong to the *same general class* as those upon which he has been using the mark. *Gutta Percha & Rubber Manufacturing Co. v. Ajax Manufacturing Co.*, 48 App. D. C. 233; *Walter Baker Co. v. Harrison*, 32 App. D. C. 272. No person may legally interfere with the use of the mark by him in the natural expansion of his business. *Simplex Heating Co. v. Gold Car H. & L. Co.*, 43 App. D. C. 28."

Furthermore, the attention of the Office is directed to an article appearing in the "Bulletin of the United States

"Trade Mark Association", Vol. XIV (1919), from which the following is quoted (pp. 22-24):—

"* * * It will be remembered that when the present charter of the American National Red Cross was granted by Congress on January 5, 1905, it contained a clause similar to the one now proposed, giving the Red Cross the exclusive right to use the emblem and providing that it should be a penal offense to use it for trade and commercial purposes. But on June 23, 1910, that section of said charter was amended by inserting the following:

> "Provided, however, that no person, corporation, or association that has actually used, or whose assignor actually used said emblem, sign, insignia, or words for any lawful purpose prior to January 5, 1905, shall be deemed forbidden by this act to continue the use thereof for the same purpose and for the same class of goods."

"As the law stands today, then, no one who had not acquired the right to use the emblem or name of the Red Cross for trade or commercial purposes before January 5, 1905, can make use of said emblem or name without laying himself liable to fine or imprisonment, or both. But those who had acquired such rights prior to the date mentioned may continue to exercise them *'for the same purpose and for the same class of goods.'* It is, obviously, the persons and organizations included within this latter group whose interests would be affected by the legislation now proposed by the representatives of the Red Cross.

"The first question naturally arising in considering this proposed enactment is whether it would not come within the prohibition of the Fifth Amendment of the Constitution of the United States, which de-

1216 *Respondent's Exhibit 1-A—IM*

clares that no person shall be deprived of his property without due process of law, and that private property shall not be taken for public use without just compensation.

"The term 'property' in this constitutional guaranty is used in a broad sense, and has received a liberal construction analogous in spirit to that applied to 'life' and 'liberty' (8 Cyc. 1094), and that the right to the use of a trade mark is a property right has been decided over and over again. As was said in the *Trade Mark Cases*, 100 U. S., at page 92:

1217

> 'The right to adopt and use a symbol as a device to distinguish the goods or property made or sold by the person whose mark it is, to the exclusion of use by all other persons, has been long recognized by the common law and the chancery courts of England and of this country, and by the statutes of some of the states. It is a property right for the violation of which damages may be recovered in an action at law, and the continued violation of it will be enjoined by a court of equity, with compensation for past infringement. This exclusive right was not created by the act of Congress, and
>
> 1218
>
> does not now depend upon it for enforcement. The whole system of trade mark property and the civil remedies for its protection existed long anterior to that act, and have continued in full force since its passage.'

"That numerous persons possess valuable property rights acquired by their having used the red cross, or similar devices which might be held imitations of that if the proposed law should be passed, is apparent. The amendment of 1940 to the Act of 1905 virtually recognizes that fact. These rights have also been recognized by the courts in numerous litigated

cases, such as *Johnson* v. *Seabury*, 71 N. J. Eq. 758; 12 L. R. A. (N. S.) 1201, 124 Am. St. Rep. 1007; *Johnson* v. *Bauer*, 82 Fed. 662; and *Loonen* v. *Dietsch*, 189 Fed. Rep. 487 (1 T. M. R. 278). Colonel Hartfield himself says (p. 4 of the printed report of the hearing before the Committee on Patents) that it has been used as a trade mark, either by having it registered in the office of the United States Patent Office or by having used it in interstate commerce, by several hundred concerns that now claim the right to use this Red Cross emblem.' It is clear, then, that the proposed act would legislate the property right of these people out of existence, and for that reason there seems to be no doubt that, if passed, it would be declared unconstitutional by the court.

"The representatives of the American Red Cross practically admit that the effect of the law would be to deprive the persons in question of their property."

And in conclusion the article states (p. 29):

"If Congress should later see fit to enact the legislation now proposed, we cannot believe, then, that it would be sustained by the courts."

It is contended that applicant has the vested right to use its Red Cross trade mark, which consists of the words "Red Cross" and the Red Cross insignia, on Packages of Toilet Paper and that Packages of Toilet Paper include Toilet Tissues and Paper Towels. To deprive the applicant of the right to use the mark either on Toilet Tissues or Paper Towels would, it is urged, take away from it a vested property right.

Summarizing the situation, applicant contends as follows:

1) That Toilet Tissue and Paper Towels are goods of the same descriptive properties and as such are goods of the

1222 *Respondent's Exhibit 1-A—1M*

same general class within the meaning of the Red Cross Act;

2) That the Red Cross Act, being criminal in nature, strict and not liberal interpretation of the language used in the Act must be enforced; and finally

3) That if the Red Cross Act were to be interpreted as depriving applicant of the use of its Red Cross mark on Paper Towels, which are goods of the same general class as Packages of Toilet Paper, then the said Act would be unconstitutional on the ground that it was taking away from
1223 applicant a vested property right without due process of law and without just compensation.

New York, November 27, 1933.

Respectfully submitted,

A. P. W. PAPER COMPANY, INC.,
By its Attorneys,
(Signature illegible)

New York, November 27, 1933.
JTF DMcC

1224

Respondent's Exhibit 1 A - 1M

[Letterhead of]

DEPARTMENT OF COMMERCE
UNITED STATES PATENT OFFICE
WASHINGTON

Rec 12 1933 10 04 AM

Mailed
Dec 11 1933

Fraser Myers & Manley
170 Broadway
New York N Y

The application for the Registration of a Trade-Mark filed by

A P W Paper Company Inc., filed Oct 4 1933
S N 342 121, In Class 37

has been examined and passed for publication, in compliance with section 6 of the act authorizing the Registration of Trade Marks, approved February 20, 1905.

The mark will be published in the Official Gazette of Jan 2 1934.

Any person who believes he would be damaged by the registration of this mark may oppose the same by filing notice of opposition, stating the grounds therefor, in the Patent Office within thirty days after the publication thereof, which said notice of opposition shall be verified by the person filing the same before one of the officers mentioned in section 2 of the act of February 20, 1905.

If no notice of opposition is filed within said time the Commissioner may issue a certificate of registration.

Copies of the Trade-Mark portion of the Official Gazette containing the publication of the mark may be obtained as soon as published at 10 cents each, from the Superintendent of Documents, Government Printing Office.

Respectfully,

CONWAY P. COE
Commissioner of Patents

1228 *Respondent's Exhibit 1-A—1M*

[Letterhead of]

DEPARTMENT OF COMMERCE

UNITED STATES PATENT OFFICE

WASHINGTON

Mailed
Feb 14 1934

A. P. W. Paper Company, Inc.

Sir:

Your APPLICATION FOR REGISTRATION OF TRADE-MARK
1229 For—paper for toilet purposes, etc.

Registered
Mar 13 1934

has been examined and allowed.

The CERTIFICATE OF REGISTRATION will be issued and forwarded to you as soon as practicable in due order of business.

Very respectfully,

CONWAY P. COE
Commissioner of Patents.

Fraser, Myers & Manley,
170 Broadway,
1230 New York, N. Y.

Respondent's Exhibit 2-A—2M

JTF/DMcC

PETITION, STATEMENT

and

POWER OF ATTORNEY

Hon. Commissioner of Patents,
Washington, D. C.

Sir:—

A. P. W. Paper Company, Inc., a corporation duly organized under the laws of the State of New York, and located and doing business at No. 1273 Broadway, in the City of Albany, County of Albany, and State of New York, has adopted and used the trade mark shown in the accompanying drawing for Paper Towels, in Class 37, Paper and Stationery, and presents herewith five specimens showing the trade mark as actually used by applicant upon the goods, and requests that the same be registered in the United States Patent Office in accordance with the Act of February 20, 1905.

Paper for Toilet purposes, namely

in its present form

The trade mark has been continuously used and applied to said goods in applicant's business since September 21, 1933.

The representation of the carton per se is disclaimed.

Applicant is the owner of United States trade mark registrations as follows:—

No. 82,193, dated June 13, 1911;
renewed June 13, 1931;
No. 297,632, dated September 20, 1932.

The trade mark is applied to the goods by being imprinted on the wrappers in which they are sold.

1234 *Respondent's Exhibit 2-A—2-M.*

The undersigned hereby appoints Fraser, Myers & Manley (said firm comprising Arthur C. Fraser, Eugene V. Myers, Franklin G. Manley, and Louis E. Giles as its members), of 170 Broadway, New York, N. Y., its attorneys, to prosecute this application for registration, with full power of substitution and revocation, to make alterations and amendments therein, to receive the certificate, and to transact all business in the Patent Office connected therewith.

SIGNED at Albany, New York, this 29th day of September, 1933.

1235 A. P. W. PAPER COMPANY, INC.,

by (sgd) DWIGHT G. W. HOLLISTER,
Executive Vice President.

(Corporate Seal)

Address only COMMISSIONER OF PATENTS WASHINGTON, D. C.

U. S. PATENT OFFICE

SERIAL NUMBER 342121
SERIES OF 1933
Oct 4-33
(Filing date)

Be sure to give the SERIAL NUMBER as well as date of filing and name of applicant when inquiring about this application.

APPLICANT A P W PAPER CO INC
ALBANY N Y

1236 GOODS PAPER TOWELS
12813

FRASER MYERS & MANLEY
170 BROADWAY
NEW YORK N Y

The petition, declaration, statement, drawing, specimens, and fee of FIFTEEN DOLLARS of your TRADE-MARK above identified, are received.

Respectfully,

CONWAY P. COE,

Commissioner of Patents.

11—8927
FORM 0513

(SEE OTHER SIDE)

Respondent's Exhibit 2-A-1931

DECLARATION

STATE OF NEW YORK }
COUNTY OF ALBANY } ss.

Dwight G. W. Hollister, being duly sworn, deposes and says that he is the Executive Vice President of A. P. W. Paper Company, Inc., the applicant named in the foregoing statement; that he believes the foregoing statements are true; that he believes said corporation is the owner of the trade-mark sought to be registered; that to the best of his knowledge and belief, no other person, firm, corporation, or association has the right to use said trade mark in the United States, either in the identical form or in any such near resemblance thereto as might be calculated to deceive; that said trade-mark is used by said corporation in commerce among the several States of the United States; that the description and drawing presented truly represent the trade-mark sought to be registered; and that the specimens show the trade mark as actually used upon the goods.

(sgd) DWIGHT G. W. HOLLISTER

SUBSCRIBED and sworn to before me, a Notary Public, this 29th day of September 1933.

(sgd) SPENCER C. [illegible]
Notary Public

(Notarial Seal)

1240 *Respondent's Exhibit 2-A—2M*

Letterhead of

DEPARTMENT OF COMMERCE

UNITED STATES PATENT OFFICE

WASHINGTON

Applicant: A. P. W. Paper Company, Inc.
Ser. No. 342,122
Filed Oct. 4, 1933
For Trade-Mark

1241

FRASER, MYERS & MANLEY
170 Broadway,
New York, N. Y.

Registration is refused on paper towels on the ground that the mark presented was not used on such goods until after the act incorporating the Red Cross Society. (Section 5b of the Act of February 20, 1905.)

(Red Cross, etc.)

1242

Respondent's Exhibit 2-A—2M 1243

(12813)

A. P. W. PAPER COMPANY, T.M.
INC.

Trade Mark. 342,122.
October 4, 1933.

AMENDMENT.
(1)

Hon. Commissioner of Patents,
Sir:

Responsive to the Official action of October 27, 1933, the above-identified application is hereby amended as follows. 1244

STATEMENT:

Line 6, after "for" insert . . . Paper for Toilet Purposes, namely. . . . .

Line 11, after "mark" insert . . . in its present form.

REMARKS.

Pursuant to the conference had on November 24, 1933 with the Primary Examiner, as well as with the Examiner in charge of this particular application, reconsideration is respectfully requested.

While it is believed that the amendments made places 1245
this application in condition for publication, the Examiner's attention is directed to the fact that the Red Cross Act as originally enacted made no provision for the use of the words "RED CROSS", or the Geneva Cross, by such persons, corporations, or associations that had actually used the words or insignia prior to the enactment of the Red Cross Act, approved January 5, 1905. Subsequently on June 23, 1910 Congress, in order to preclude the prior Act of 1905 from being declared unconstitutional on the ground that it took away from such persons, corporations, or associations that had used the words or insignia prior to the enactment of the

Act in 1905, the property right to so use the said words or insignia, passed an amendment to the Red Cross Statute which specifically provided as follows:—

> "* * * That no person, corporation, or association that actually used or whose assignor actually used the said emblem, sign, insignia, or words for any lawful purpose prior to January fifth, nineteen hundred and five, shall be deemed forbidden by this Act to continue the use thereof for the same purpose and for the same class of goods."

1247

Attention is directed to the language "no person, corporation, or association * * * shall be deemed forbidden to continue the use thereof for the same purpose and for the *same class of goods*." The Patent Office and the courts have recognized that by the term "same class of goods" is meant goods of the same descriptive properties. The Patent Office has indicated that Toilet Paper and Paper Towels are goods of the same descriptive properties. Hence, they are goods of the same class. Furthermore, the trade in general as well as the purchasing public recognizes that Paper Towels and Toilet Paper or Toilet Tissue are goods of the same general class and that they are goods of the same descriptive prop-

1248 erties. The same basic raw materials are used in the manufacture of Toilet Paper and Paper Towels. The goods are made by the same manufacturers and they are sold over the same counters. They are also included under the term "Toilet Papers" when used in a broad sense, that is, Paper for Toilet uses, and such Papers may be Toilet Tissues, Facial Tissues, Paper Towels, etc.

The fact must not be overlooked that the Red Cross Statute is unquestionably a criminal statute. The Act specifically provides:—

> "If any person violates the provision of this section he shall be deemed guilty of a misdemeanor, and upon

conviction in any Federal Court shall be liable to a fine of not less than one or more than five hundred dollars, or imprisonment for a term not exceeding one year, or both, for each and every offense. * * *

It being a criminal statute, "strict" and not "liberal" interpretation of the language used in the Act must be enforced. The Act provides:—

> "* * * That no person, corporation, or association * * * shall be deemed forbidden to continue the use thereof for the same purpose and for the same class of goods."

In *William Waltke & Co. v. Geo. H. Schafer & Co.*, 263 Fed. 650, the Court of Appeals of the District of Columbia in considering the right of the owner of a trade mark to extend the use of the mark, stated (p. 651):—

> "The owner of a trade mark has the right, not only to its exclusive use on goods which he has manufactured, but also on goods which he may afterwards produce, if they belong to the *same general class* as those upon which he has been using the mark. *Gutta Percha & Rubber Manufacturing Co. v. Apex Manufacturing Co.*, 48 App. D. C. 233; *Walter Baker Co. v. Harrison*, 32 App. D. C. 272. No person may illegally interfere with the use of the mark by him in the natural expansion of his business. *Simplex Heating Co. v. Gold Car H. & L. Co.*, 43 App. D. C. 28."

Furthermore, the attention of the Office is directed to an article appearing in the "Bulletin of the United States Trade Mark Association", Vol. XIV (1919), from which the following is quoted (pp. 22-24):—

> "* * * It will be remembered that when the present charter of the American National Red Cross was

granted by Congress on January 5, 1905, it contained a clause similar to the one now proposed, giving the Red Cross the exclusive right to use the emblem and providing that it should be a penal offense to use it for trade and commercial purposes. But on June 23, 1910, that section of said charter was amended by inserting the following:

> 'Provided, however, that no person, corporation, or association that has actually used, or whose assignor actually used said emblem, sign, insignia, or
1253 words for any lawful purpose prior to January 5, 1905, shall be deemed forbidden by this act to continue the use thereof for the same purpose and for the same class of goods.'

"As the law stands today, then, no one who had not acquired the right to use the emblem or name of the Red Cross for trade or commercial purposes before January 5, 1905, can make use of said emblem or name without laying himself liable to fine or imprisonment, or both. But those who had acquired such rights prior to the date mentioned may continue to exercise them *'for the same purpose and for the same*
1254 *class of goods'*. It is, obviously, the persons and organizations included within this latter group whose interests would be affected by the legislation now proposed by the representatives of the Red Cross.

"The first question naturally arising in considering this proposed enactment is whether it would not come within the prohibition of the Fifth Amendment of the Constitution of the United States, which declares that no person shall be deprived of his property without due process of law, and that private property shall not be taken for public use without just compensation.

"The term 'property', in this constitutional guaranty is used in a broad sense, and has received a liberal construction analogous in spirit to that applied to 'life' and 'Liberty' (8 Cyc. 1091), and that the right to the use of a trade mark is a property right has been decided over and over again. As was said in the *Trade Mark Cases*, 100 U. S. at paige 92:

> 'The right to adopt and use a symbol as a device to distinguish the goods or property made or sold by the person whose mark it is, to the exclusion of use by all other persons, has been long recognized by the common law, and the chancery courts of England and of this country, and by the statutes of some of the states. It is a property right for the violation of which damages may be recovered in an action at law, and the continued violation of it will be enjoined by a court of equity, with compensation for past infringement.' This exclusive right was not created by the act of Congress, and does not now depend upon it for enforcement. The whole system of trade mark property and the civil remedies for its protection existed long anterior to that act, and have continued in full force since its passage.'

"That numerous persons possess valuable property rights acquired by their having used the red cross, or similar devices which might be held imitations of that if the proposed law should be passed, is apparent. The amendment of 1916 to the Act of 1905 virtually recognizes that fact. These rights have also been recognized by the courts in numerous litigated cases, such as *Johnson v. Seabury*, 71 N. J. Eq. 750; 12 L. R. A. (N. S.) 1201; 124 Am. St. Rep. 1007; *Johnson v. Bauer*, 82 Fed. 662; and *Loonen v. Dietsch*, 186 Fed. Rep. 487 (T. M. R. 278). Colonel Hartfield himself says (p. 4 of the printed report of the hearing before the Com-

1258 *Respondent's Exhibits 2-A—2-M*

mittee on Patents) that it has been used as a trade mark, either by having it registered in the office of the United States Patent Office or by having used it in interstate commerce, by several hundred concerns that now claim the right to use this Red Cross emblem." It is clear, then, that the proposed act would legislate the property rights of these people out of existence, and for that reason there seems to be no doubt that, if passed, it would be declared unconstitutional by the court.

1259 "The representatives of the American Red Cross practically admit that the effect of the law would be to deprive the persons in question of their property."

And in conclusion the article states (p. 29):

"If Congress should later see fit to enact the legislation now proposed, we cannot believe, then, that it would be sustained by the courts."

It is contended that applicant has the vested right to use its Red Cross trade mark, which consists of the words "Red Cross" and the Red Cross insignia, on Packages of Toilet Paper and that Packages of Toilet Paper include Toilet
1260 Tissues and Paper Towels. To deprive the applicant of the right to use the mark either on Toilet Tissues or Paper Towels would, it is urged, take away from it a vested property right.

Summarizing the situation, applicant contends as follows:—

1) That Toilet Tissue and Paper Towels are goods of the same descriptive properties and as such are goods of the same general class within the meaning of the Red Cross Act;

2) That the Red Cross Act, being criminal in nature, strict and not liberal interpretation of the language used in the Act must be enforced; and finally

3. That if the Red Cross Act were to be interpreted as depriving applicant of the use of its Red Cross mark on Paper Towels, which are goods of the same general class as Packages of Toilet Paper, then the said Act would be unconstitutional on the ground that it was taking away from applicant a vested property right without due process of law and without just compensation.

Respectfully submitted,

A. P. W. PAPER COMPANY, INC.,

By its Attorneys,

(Signature illegible)

New York, November 27, 1933.

JTF/DMcC

Letterhead of

DEPARTMENT OF COMMERCE
UNITED STATES PATENT OFFICE,
WASHINGTON.

Fraser Meyers & Manley
170 Broadway
New York N Y

The application for the Registration of a Trade-Mark
1265 filed by A P W Paper Company Inc., filed Oct 4 1933
S N 342 122, in Class 37 has been examined and passed for
publication, in compliance with section 6 of the act author-
izing the Registration of Trade-Marks, approved February
20, 1905.

The mark will be published in the Official Gazette of
Jan 2 1934

Any person who believes he would be damaged by the
registration of this mark may oppose the same by filing
notice of opposition, stating the grounds therefor, in the Pat-
ent Office within thirty days after the publication thereof
which said notice of opposition shall be verified by the per-
son filing the same before one of the officers mentioned in
1266 section 2 of the act of February 20, 1905.

If no notice of opposition is filed within said time the
Commissioner may issue a certificate of registration.

Copies of the Trade-Mark portion of the Official Gazette
containing the publication of the mark may be obtained as
soon as published at 10 cents each, from the Superintendent
of Documents, Government Printing Office.

Respectfully,

CONWAY P COE
Commissioner of Patents

Respondent's Exhibits 2-A—2-M

No. 342,123

Letterhead of

DEPARTMENT OF COMMERCE

UNITED STATES PATENT OFFICE

WASHINGTON

A. P. W. Paper Company, Inc.

Sir:

Your APPLICATION for REGISTRATION of TRADE MARK

For—paper for toilet purposes, has been examined and allowed.

The CERTIFICATE OF REGISTRATION will be issued and forwarded to you as soon as practicable in due order of business.

Very respectfully,

CONWAY P. COE,
Commissioner of Patents.

Fraser, Meyers & Manley,
170 Broadway,
New York, N. Y.

659882 O—34—2

1270 **Respondent's Exhibit 3**

Letterhead of

THE AMERICAN RED CROSS
NATIONAL HEADQUARTERS
WASHINGTON, D. C.

January 9, 1934

James T. Forrest, Esquire
Fraser, Myers & Manley
170 Broadway
New York, New York

1271 My dear Mr. Forrest:

Does your firm have as its client the A. P. W. Paper Company, Albany, New York? If so, I write in connection with the trade mark application, serial No. 342,122, appearing on page 17 in the January 2, 1934 issue of the Patent Office Gazette. This trade mark application uses the words "Red Cross" and the Greek cross which I presume the A. P. W. Paper Company intends to display in red. Use of the above trade mark is stated to be in connection with paper towels.

Our discussions in the past have referred solely to the right of the A. P. W. Paper Company to use the Red Cross
1272 name and emblem in connection with the manufacture and distribution of toilet paper. It would appear to us that the proposed extension of this use to include paper towels would be a violation of the Congressional statute protecting the name and emblem of our society.

Before going further into the matter, I would very much like to have a written explanation of your point of view concerning this question.

Very sincerely yours,

H. J. HUGHES.
H. J. Hughes,
Legal Adviser.

HJH:CS

Respondent's Exhibit 4-A—4-G 1273

C
O
P
Y

January 15, 1934.

H. J. Hughes, Esq., Legal Adviser,
The American Red Cross,
Washington, D. C.

My dear Mr. Hughes:—

I have your letter of January 9, 1934 wherein you refer to application, Serial No. 342,122, published January 2, 1934 in the name of A. P. W. Paper Company, Inc., of Albany, N. Y., covering the trade mark "RED CROSS" as applied to Paper Towels. This application was prepared and filed at the suggestion of my firm. 1274

The A. P. W. Paper Company, Inc. has been advised that the extension of the use of its trade mark to include Paper Towels is not a violation of the Red Cross Act of January 5, 1905, amended June 23, 1910. My views with respect to this are as follows—

Your attention is directed to the fact that the Red Cross Act as originally enacted made no provision for the use of the words "Red Cross", or the Geneva Cross, by such persons, corporations, or associations that had actually used the words or insignia prior to the enactment of the Red Cross Act, approved January 5, 1905. Subsequently on June 23, 1910 Congress, in order to preclude the prior Act of 1905 from being declared unconstitutional on the ground that it took away from such persons, corporations, or associations that had used the words or insignia prior to the enactment of the Act in 1905, the property right to so use the said words or insignia, passed an amendment to the Red Cross Statute, which specifically provided as follows:— 1275

1276 *Respondent's Exhibit 4-A—4-G*

> "* * * That no person, corporation, or association that actually used or whose assignor actually used the said emblem, sign, insignia, or words for any lawful purpose prior to January fifth, nineteen hundred and five, shall be deemed forbidden by this Act to continue the use thereof for the same purpose and for the same class of goods."

Attention is directed to the language "no person, corporation, or association * * * shall be deemed forbidden to continue the use thereof for the same purpose and for the *same*
1277 *class of goods*." The Patent Office and the courts have always recognized that by the term "same class of goods" is meant goods of the same descriptive properties. Toilet Paper and Paper Towels are goods of the same descriptive properties. Hence, they are goods of the same class. Furthermore, the trade in general as well as the purchasing public recognizes that Paper Towels and Toilet Paper or Toilet Tissue are goods of the same general class and that they are goods of the same descriptive properties. The same basic raw materials are used in the manufacture of Toilet Paper and Paper Towels. The goods are made by the same manufacturers and they are sold over the same counters. They are also included under the term "Toilet Papers" when used in a broad sense
1278 that is, Paper for Toilet uses, and such Papers may be Toilet Tissues, Facial Tissues, Paper Towels, etc.

The fact must not be overlooked that the Red Cross Statute is unquestionably a criminal statute. The Act specifically provides:—

> "If any person violates the provision of this section he shall be deemed guilty of a misdemeanor, and upon conviction in any Federal Court shall be liable to a fine of not less than one or more than five hundred dollars, or imprisonment for a term not exceeding one year, or both, for each and every offense."

1279

It being a criminal statute, "strict" and not "liberal" interpretation of the language used in the Act must be enforced.

The Act provides —

> "• • • That no person, corporation, or association • • • shall be deemed forbidden to continue the use thereof for the same purpose and for the same class of goods."

In *William Waltke & Co. v. Geo. H. Schafer & Co.*, 268 Fed. 650, the Court of Appeals of the District of Columbia, in considering the right of the owner of a trade mark to extend the use of the mark, stated (p. 651.) —

1280

> "The owner of a trade mark has the right not only to its exclusive use on goods which he has manufactured, but also on goods which he may afterwards produce, if they belong to the *same general class* as those upon which he has been using the mark. *Gutta Percha & Rubber Manufacturing Co. v. Anas Manufacturing Co.*, 48 App. D. C. 233; *Walter Baker Co. v. Harrison*, 32 App. D. C. 272. No person may legally interfere with the use of the mark by him in the natural expansion of his business." *Simplex Heating Co. v. Gold Car H. & L. Co.*, 43 App. D. C. 28."

1281

Furthermore, your attention is directed to an article appearing in the "Bulletin of the United States Trade Mark Association", Vol. XIV (1919), from which the following is quoted (pp. 22-24) —

> "• • • It will be remembered that when the present charter of the American National Red Cross was granted by the Congress on January 5, 1905, it contained a clause similar to the one now proposed, giving the Red Cross the exclusive right to use the emblem and providing that it should be a penal offense

1282 *Respondent's Exhibit 4-A—4-G*

to use it for trade and commercial purposes. But on June 23, 1910, that section of said charter was amended by inserting the following:—

> 'Provided, however, that no person, corporation or association that has actually used, or whose assignor actually used said emblem, sign, insignia or words for any lawful purpose prior to January 5, 1905, shall be deemed forbidden by this act to continue the use thereof for the same purpose and for the same class of goods.'

1283 "As the law stands today, then, no one who had not acquired the right to use the emblem or name of the Red Cross for trade or commercial purposes before January 5, 1905, can make use of said emblem or name without laying himself liable to fine or imprisonment, or both. But those who had acquired such rights prior to the date mentioned may continue to exercise them *'for the same purpose and for the same class of goods'*. It is, obviously, the persons and organizations included within this latter group whose interests would be affected by the legislation now proposed by the representatives of the Red Cross.

1284 "The first question naturally arising in considering this proposed enactment is whether it would not come within the prohibition of the Fifth Amendment of the Constitution of the United States, which declares that no person shall be deprived of his property without due process of law, and that private property shall not be taken for public use without just compensation.

"The term 'property', in this constitutional guaranty is used in a broad sense, and has received a liberal construction analogous in spirit to that applied to 'life' and 'liberty' (8 Cyc, 1094), and that the right to the use of a trade mark is a property right

1285

has been decided over and over again. As was said in the *Trade Mark Cases*, 100 U. S., at page 92:—

> 'The right to adopt and use a symbol as a device to distinguish the goods or property made or sold by the person whose mark it is, to the exclusion of use by all other persons, has been long recognized by the common law and the chancery courts of England and of this country, and by the statutes of some of the states. It is a property right for the violation of which damages may be recovered in an action at law, and the continued violation of it will be enjoined by a court of equity, with compensation for past infringement. This exclusive right was not created by the act of Congress, and does not now depend upon it for enforcement. The whole system of trade mark property and the civil remedies for its protection existed long anterior to that act, and have continued in full force since its passage.'

1286

"That numerous persons possess valuable property rights acquired by their having used the red cross, or similar devices which might be held imitations of that if the proposed law should be passed, is apparent. The amendment of 1919 to the Act of 1905 virtually recognizes that fact. These rights have also been recognized by the courts in numerous litigated cases, such as *Johnson* v. *Seabury*, 71 N. J. Eq. 750 12 L. R. A. (N. S.) 1201; 124 Am. St. Rep. 1007; *Johnson* v. *Bauer*, 82 Fed. 662; and *Loomen* v. *Dietsch*, 189 Fed. Rep. 487. (T. M. R. 278.) Colonel Hartfield himself says (p. 4 of the printed report of the hearing before the Committee on Patents) that 'it has been used as a trade mark, either by having it registered in the office of the United States Patent Office or by having used it in interstate commerce, by'

1287

several hundred concerns that now claim the right to use this Red Cross emblem. It is clear, then, that the proposed act would legislate the property right of these people out of existence, and for that reason there seems to be no doubt that, if passed, it would be declared unconstitutional by the court.

"The representatives of the American Red Cross practically admit that the effect of the law would be to deprive the persons in question of their property."

1289 And in conclusion the article states (p. 29):—

"If Congress should later see fit to enact the legislation now proposed, we cannot believe, then, that it would be sustained by the courts."

It is contended that A. P. W. Paper Company, Inc. has the vested right to use its Red Cross trade mark, which consists of the words "Red Cross" and the Red Cross insignia, on Packages of Toilet Paper and that Packages of Toilet Paper include Toilet Tissues and Paper Towels. To deprive A. P. W. Paper Company, Inc. of the right to use the mark either on Toilet Tissues or Paper Towels would, it is urged,
1290 take away from it a vested proper right.

Summarizing the situation, it is contended—

1) That Toilet Tissue and Paper Towels are goods of the same descriptive properties and as such are goods of the same general class within the meaning of the Red Cross Act;

2) That the Red Cross Act, being criminal in nature, strict and not liberal interpretation of the language used in the Act must be enforced; and finally

3) That, if the Red Cross Act were to be interpreted as depriving A. P. W. Paper Company, Inc. of the use of its

Respondent's Exhibit 4-A—4-G

Red Cross mark on Paper Towels, which are goods of the same general class as Packages of Toilet Paper, then the said Act would be unconstitutional on the ground that it was taking away from said Company a vested property right without due process of law and without just compensation.

I want to take this opportunity of thanking you for having submitted this matter to me in order that I may express to you my views on the subject. I assure you that this matter received very careful consideration and that I could find no legal or equitable reason why N. P. W. Paper Company, Inc. should not be entitled to the use of its mark on Paper Towels. If there had been any doubt whatsoever it would have been advised not to proceed with the matter.

If I have not fully covered the situation to your entire satisfaction and you know of any decisions which would warrant a change of opinion, I will be only too glad to have you call these to my attention.

With kind regards and wishing you a Happy and Prosperous New Year, I am,

Very truly yours,

(Sgd.) JAMES T. FORBES.

JTF DMcC
(12812-3)

1294 **Respondent's Exhibit 5**

Letterhead of

THE AMERICAN RED CROSS
NATIONAL HEADQUARTERS
WASHINGTON, D. C.

January 31, 1934

James T. Forrest, Esquire
Fraser, Myers & Manley
Attorneys and Counsellors at Law
170 Broadway
New York, New York

1295

My dear Mr. Forrest:

Thank you very much for writing me so fully under date of January 15th setting forth your basis for claiming that your client, the A. P. W. Paper Company, Incorporated, of Albany, New York, can legally use the name "Red Cross" on paper towels.

The extension which you feel is warranted in view of the earlier registration of the trade-mark, and its use on toilet paper, is one with which we do not find ourselves in accord. The whole question will have our further consideration, and I will write you later.

1296

Very sincerely yours,

H. J. HUGHES
H. J. Hughes
Legal Adviser

HJH:CS

Respondent's Exhibit 6

1297

February 6, 1941

Hon. Commissioner of Patents,
Washington, D. C.

Sir:

This office has under consideration a question involving rights to a trade mark on toilet tissues in Class 37, Paper and stationery. The question involved is: Does the Patent Office consider toilet tissue and paper towels to be goods of the same class?

1298

We have made diligent search for authority on the subject, but could find no case in point.

An official response to the query submitted in this letter would be appreciated.

Respectfully,

FRASER, MYERS & MANLEY

JTF/DMcC

1299

1300 **Respondent's Exhibit 7**

LETTER No. 18304

Letterhead of

DEPARTMENT OF COMMERCE
UNITED STATES PATENT OFFICE
WASHINGTON

February 10, 1941

Messrs. Fraser, Myers & Manley,
170 Broadway,
1301 New York, N. Y.

Attention: Mr. J. T. Forbes

Gentlemen:

Receipt is acknowledged of your letter of February 8, 1941, in regard to a trade-mark used on toilet tissues and paper towels. The trade-mark examiner states that toilet tissues and paper towels are goods of the same descriptive properties.

Yours very truly,

1302 J. A. BREARLEY
J. A. Brearley
Chief Clerk

Respondent's Exhibit 8

RED CROSS, RED-CROSS

1. A cross of a red colour, esp. as the national emblem of England: St. George's Cross.

a 1430 *Agincourt* 83 in Hazl. *E. P. P.* II. 90 On euery panes a crosse rede. 1513 Sayn Georges streners sprede ouer hede. a 1578 LINDESAY (Pitscottie) *Chron. Scot.* (S. T. S.) II. 29 The Scottis ... war all faine ... to tak on the reid cross and to be sworne as natiue subiectis of the king of Ingland. 1601 J. WHEELER *Treat. Commerce* 30 Wearing the red Crosse or Cognizance of England. 1652 EVELYN *Diary* 6 Mar., Heraulds carrying the armes of the State (as they call'd it), namely, the red crosse and Ireland. 1803 SCOTT *Last Minstr.* I. vi. To see St. George's red cross streaming. 1838 HALIBURTON *Clockm. Ser.* II. i. On fresh or on salt water... down comes the red cross and up go the stars.

b. as the mark made on the doors of infected houses during the London plagues of the 17th century.

1636 *Direct. Cure Plague* II 2 b, That euery house visited be marked with a Red Crosse of a foot long, in the middle of the doore. 1654 WHITELOCK *Zootamia* 329 A Doore... and a red Crosse on it would effectually bring a licentious Gallant out of conceit with a Brothel-house. 1661 KILLIGREW *Parson's Wedding* IV. iii, Let us not forget ourselves in our grief: I am not ambitious of a Red Crosse upon the door. 1665 *Orders Ld. Mayor & Aldermen Guild Lond.* B 2 (as in quot. 1636 above).

c. as the badge of an ambulance service, esp. of the Geneva cross (see GENEVA).

1863 *Resolutions, etc. Conf. Geneva* 5 They shall wear round the arm a white band with a red cross upon it. 1891 HULME *Heraldry* 269 The surgeons, nurses, and assistants have a white armlet with the red cross, the sacred badge that proclaims their neutrality of service.

2. *transf.* †a. An English ship. *Obs.*

1622 CAPT. SMITH *New-Eng. Trials* Wks. (Arb.) 262 More afraid—then the smallest red-crosse [that] crosses the seas would be—of any French Piccaroun [etc.].

b. The Christian side in the Crusades.

1801 SCOTT FIRE-KING, XXVI The Red-cross wax'd faint and the Crescent came on. *Ibid.* XXXVII, How the Red-cross it conquer'd, the Crescent it fell.

1307 c. An ambulance or hospital service organized in accordance with the Geneva convention of 1864, and distinguished by a cross (see 1 c); a person attached to an ambulance or hospital of this kind.

1877 W. E. FORSTER in Reid *Life* (1888) II. iv. 169, I went down with Russian Red Crosses in the Austrian steamer. 1897 C. BIGHAM *With Turkish Army in Thessaly* XIV. 127 Detachments of the Red Cross, who worked efficiently and generously throughout.

3. *attrib.* a. (sense 1) as *red-cross ensign, flag, knight, power, rank, shield.*

1308 1889 DOYLE *Micah Clarke* 23 He . . had fought under the *red cross ensign against Frenchman, Don, Dutchman, and Moor. 1820 SOUTHEY *Portr. Bp. Heber*, All seas have seen thy *red-cross flag In war triumphantly display'd. 1590 SPENSER *F. Q.* I. vi. 38 The *Redcrosse knight was slain with Paynim knife. 1833 TENNYSON *Lady of Shalott* III. i. A red-cross knight for ever kneel'd To a lady in his shield. 1811 SCOTT *Don Roderick* III. ii, Till . . their own sea hath whelm'd your *red-cross powers. 1777 T. WARTON *Poems* 64 When Arthur rang'd his *red-cross ranks On conscious Camlan's crimson'd banks. 1811 SCOTT *Don Roderick* II. lvi. Fast as they land the red-cross ranks unite. 1814—*Ld. of Isles* VI.

xxix, Alone, De Argentine Yet bears on high his red cross shield.

b. (sense 1 C or 2 C) as *Red Cross Association, hospital man, Society.*

1873 C. A. Gordon *Lessons Hygiene* Introd., Societies and individuals connected with the Red Cross Associations. 1876 W. E. Forster in Reid *Life* (1888) II. iii. 124 The steamer was crowded with Russians, but many of them really Red Cross men, an ambulance from Kazan. 1878 *Temple Bar Mag.* LIV. 525 Women . . who left their . . homes to work almost day and night in the rough barracks of the Red Cross hospitals.

So Red crossed *a.*

1643 Quarles *Emblems* v. xiii. Tell me, my wishing soul, didst ever trie How fast the wings of red-crost faith can flie?

Red-crowned : see Red *a.* 11 b.

Red currant. a. The fruit of the *Ribes rubrum* (see Currant, sense 2) or the shrub itself. b.

Respondent's Exhibit 9

H. R. 6911

EXHIBIT II.—*Receipts, resources, expenditures, and unexpended balances annually—American National Red Cross*

Year	Receipts	Resources	Expenditures	Unexpended balance
1900	$20,115.40	$20,115.40	$16,214.48	$3,900.92
1901	8,072.77	11,973.69	29,715.51	2,258.18
1902	343.80	2,601.98	899.07	1,702.81
1903	1,353.91	3,056.72	2,931.82	124.90
1904	9,433.47	9,558.37	9,430.28	128.09
1905	4,535.36	4,663.45	2,902.35	1,761.10
1906	3,371,476.77	3,373,237.87	991,903.41	2,381,334.46
1907	427,907.64	2,809,242.10	2,299,750.09	509,492.01
1908	73,264.59	582,756.60	252,747.42	330,012.18
1909	1,417,354.75	1,747,306.91	1,547,588.59	199,778.32
1910	3,148,071.33	3,342,849.65	3,232,466.96	110,382.69
1911	394,289.43	504,672.12	465,008.80	39,663.32
1912	517,105.00	556,768.32	452,800.32	103,968.00
1913	2,178,533.51	2,282,501.51	1,584,645.22	697,856.29
1914	1,446,029.96	2,143,886.25	1,586,446.15	557,440.10
1915	1,043,099.15	1,600,539.25	1,284,858.13	315,681.12
1916	2,169,628.14	2,485,309.26	1,577,435.68	927,873.58
Dec. 1, 1916, to June 30, 1917	3,058,846.30	3,986,719.88	2,014,696.59	1,972,023.29
1917 to 1918	112,408,458.91	114,380,482.20	98,354,118.68	16,026,363.51

Year	Receipts	Resources	Expenditures	Unexpended balance
1918 to 1919	294,373,706.46	310,403,000.00	211,000,000.00	99,400,000.00
1919 to 1920	73,800,000.00	173,200,000.00	118,100,000.00	55,100,000.00
1920 to 1921	33,400,000.00	88,500,000.00	41,400,000.00	47,100,000.00
1921 to 1922	11,300,000.00	58,400,000.00	23,500,000.00	34,900,000.00
1922 to 1923	10,500,000.00	45,400,000.00	16,300,000.00	29,100,000.00
1923 to 1924	19,080,000.00	49,000,000.00	21,400,000.00	27,600,000.00
1924 to 1925	11,500,000.00	39,100,000.00	10,300,000.00	28,800,000.00
1925 to 1926	7,700,000.00	36,500,000.00	11,900,000.00	24,600,000.00
1926 to 1927	28,100,000.00	52,700,000.00	16,100,000.00	36,600,000.00
1927 to 1928	13,200,000.00	49,800,000.00	25,000,000.00	24,800,000.00
1928 to 1929	15,600,000.00	40,400,000.00	16,000,000.00	24,400,000.00
1929 to 1930	8,950,000.00	33,350,000.00	9,250,000.00	24,100,000.00
1930 to 1931	14,034,835.00	38,134,835.00	22,277,861.00	15,856,974.00
1931 to 1932	10,750,447.00	26,607,421.00	14,053,334.00	12,554,087.00
1932 to 1933	12,048,883.00	24,602,970.00	12,074,436.00	12,528,534.00
1933 to 1934	10,744,421.00	23,272,955.00	10,980,217.00	12,292,738.00
1934 to 1935	9,070,527.00	21,363,265.00	8,545,644.00	12,817,621.00
1935 to 1936	17,865,294.00	30,682,915.00	13,682,821.00	17,000,094.00
1936 to 1937	35,967,185.00	52,967,279.00	32,485,000.00	20,482,279.00
1937 to 1938	11,550,198.00	32,032,463.00	17,163,566.00	14,868,903.00
1938 to 1939	12,373,425.00	27,242,328.00	12,800,789.00	14,441,539.00
1939 to 1940	23,500,212.00	37,950,751.00	14,724,089.00	23,226,662.00
1940 to 1941	30,915,396.00	53,241,828.00	24,949,114.00	28,292,714.00

NOTE.—Resources—unexpended balance carried over plus current receipts. Endowments not included, so this is an operating table only.

Source.—Annual reports, American National Red Cross.

Respondent's Exhibit 10

EXHIBIT IX.—*Membership, adult and junior—American National Red Cross*

Year	Adult	Junior
1900		
1901		
1902	125	
1903	298	
1904	633	
1905	3,337	
1906	9,262	
1907	5,852	
1908	11,864	
1909	11,618	
1910	16,886	
1911	12,778	
1912	12,685	
1913	14,678	
1914	16,708	
1915	22,500	
1916	1,805,832	
Dec. 1, 1916, to June 30, 1917	6,385,000	
1917 to 1918	20,300,173	8,293,114
1918 to 1919	19,848,920	11,000,000
1919 to 1920	8,088,140	6,542,570
1920 to 1921	5,804,857	5,713,000
1921 to 1922	3,955,454	4,483,845
1922 to 1923	3,506,500	4,827,261
1923 to 1924	3,123,074	5,596,033
1924 to 1925	3,103,870	5,738,548
1925 to 1926	3,012,055	5,540,428
1926 to 1927	3,087,789	5,822,757
1927 to 1928	4,058,949	6,520,252
1928 to 1929	4,127,946	6,878,423
1929 to 1930	4,130,966	6,930,849
1930 to 1931	4,075,649	7,106,288
1931 to 1932	4,004,459	6,775,508
1932 to 1933	3,701,866	6,629,866
1933 to 1934	3,802,384	6,968,405
1934 to 1935	3,837,941	7,752,243
1935 to 1936	4,137,636	8,351,298
1936 to 1937	4,904,316	8,577,198
1937 to 1938	5,523,585	9,070,758
1938 to 1939	5,668,680	7,556,396
1939 to 1940	7,139,263	8,558,398
1940 to 1941	9,190,474	9,749,035

Source: Annual reports, American National Red Cross.

Respondent's Exhibit 11

REPORT TO ACCOMPANY H. R. 22311, SIXTY-FIRST CONGRESS, SECOND SESSION (SEE S. 6877).

61ST CONGRESS, 2d Session } HOUSE OF REPRESENTATIVES } REPORT No. 1256

AMENDING ACT RELATING TO AMERICAN NATIONAL RED CROSS

May 3, 1910.—Referred to the House Calendar and ordered to be printed

Mr. DENBY, from the Committee on Foreign Affairs, submitted the following

REPORT

[To accompany H. R. 22311]

The Committee on Foreign Affairs, to whom was referred the bill (H. R. 22311) to amend an act entitled "An act to incorporate the American National Red Cross," approved January 5, 1905, having considered the same, report thereon with a recommendation that it do pass with the following amendments:

On page 1, line 4, insert between the words "Cross" and "is" the words "approved January fifth, nineteen hundred and five," to conform to the title.

On page 1, line 12, between the words "or" and "display," strike out the word "to," to correct a typographical error.

On page 2, line 13, strike out from and including the word "that" to and including the word "thereof" in line 22, and insert in lieu thereof the following:

That no person, corporation, or association that actually used the said emblem, sign, insignia, or words for any lawful purpose prior to January fifth, nineteen hundred and five, shall be deemed forbidden by this act to continue the use thereof for the same purpose and for the same class of goods.

1324 *Respondent's Exhibit 11*

The bill when thus amended will read as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section four of the act entitled "An act to incorporate the American National Red Cross," approved January fifth, nineteen hundred and five, is hereby amended to read as follows:

"SEC. 4. That from and after the passage of this act it shall be unlawful for any person within the jurisdiction of the United States to falsely or fraudulently hold himself out as, or represent or pretend himself to be, a member of, or an
1325 agent for, the American National Red Cross, for the purpose of soliciting, collecting, or receiving money or material; or for any person to wear or display the sign of the red cross or any insignia colored in imitation thereof for the fraudulent purpose of inducing the belief that he is a member of or an agent for the American National Red Cross. It shall be unlawful for any person, corporation, or association, other than the American National Red Cross and its duly authorized employees and agents and the army and navy sanitary and hospital authorities of the United States, to have or to use within the territory of the United States of America and its exterior possessions the emblem of the Greek red cross on a white ground, or any sign or insignia made or colored
1326 in imitation thereof or of the words 'Red Cross' or 'Geneva Cross' or any combination of these words in connection with the said emblem or without connection with it for any purpose whatsoever: *Provided, however,* That no person, corporation, or association that actually used the said emblem, sign, insignia, or words for any lawful purpose prior to January fifth, nineteen hundred and five, shall be deemed forbidden by this act to continue the use thereof for the same purpose and for the same class of goods.

"If any person violates the provisions of this section he shall be deemed guilty of a misdemeanor, and upon conviction in any federal court shall be liable to a fine of not less than one nor more than five hundred dollars, or imprisonment for a term not exceeding one year, or both, for each and every offense."

SEC. 2. That the following section is hereby added to said act:

"SEC. 8. That the endowment fund of the American National Red Cross shall be kept and invested under the management and control of a board of nine trustees, who shall be elected from time to time by the incorporators and their successors, under such regulations regarding terms and tenure of office, accountability, and expense as said incorporators and successors shall prescribe."

Section 1 of the bill as amended amends section 4 of the act of 1905, that portion of the language of the original section intended to be amended being as follows:

Nor shall it be lawful for any person or corporation, other than the Red Cross of America, not now lawfully entitled to use the sign of the red cross, hereafter to use such sign or any insignia colored in imitation thereof for the purposes of trade or as an advertisement to induce the sale of any article whatsoever.

The sign of the red cross may be used under existing law without criminal liability by the following persons and corporations and for the following purposes:

(1) By the Red Cross of America.

(2) By persons or corporations lawfully entitled to the use of the emblem prior to the date of the approval of the act.

1330 *Respondent's Exhibit 11*

(3) By any person or corporation, for any purposes except for the purposes of trade or as an advertisement to induce the sale of any article.

It soon became apparent that the language of the original section, as above set forth, was not sufficient to prevent the indiscriminate use of the emblem by unauthorized persons. For instance, at the time of the San Francisco earthquake anyone who desired to cross the so-called "dead line" affixed to his arm the sign of the red cross and was permitted to pass, nor was there any law to prevent his doing so. A great
1331 deal of confusion resulted from this unrestricted use of the emblem, and one man, displaying the sign of the red cross without authority, was shot and killed while attempting to cross the line. Similar confusion was created by the unauthorized use of the emblem in connection with the Cherry mine disaster, the American Red Cross having no legal authority to prohibit the use of the sign of the red cross by irresponsible persons over whom it had no control.

That the necessity of preserving the protective powers of the symbol is of the utmost importance is readily apparent, and the pending bill was introduced for the purpose of affording to it as much protection as is legally possible.

The act, as amended by the pending bill, will permit the
1332 use of the symbol by the following persons, corporations, and associations:

(1) By the American National Red Cross and its duly authorized employees and agents.

(2) By the army and navy sanitary and hospital authorities of the United States.

(3) By such persons, corporations, and associations as actually used the emblem prior to January 5, 1905, for the purposes for which they were so entitled to use it and for the same class of goods.

Respondent's Exhibit 11

The section, as so amended, grants to the American National Red Cross the fullest protection it is possible to afford it by congressional enactment and at the same time amply protects the concerns possessing vested property rights in the emblem.

The original act is further amended by the first section of the bill, in that the words, "The fine so collected shall be paid to the American National Red Cross," have been stricken out, the society not believing it proper that it should profit by the fines collected as a result of prosecutions under the act, and such fines will in the future be paid into the United States Treasury.

Section 2 of the bill adds a new section to the original act, providing for the election, by the incorporators and their successors, of a board of trustees to manage, control, and invest the endowment fund of the society, under such regulations as the said incorporators and their successors shall prescribe. Such a board of trustees has, in the opinion of the incorporators, become necessary to handle the endowment fund, which in all probability will eventually be a large fund, as it now contains approximately $500,000 and is steadily increasing. Under the act an annual accounting is made to Congress of all funds, and the proposed board will be directly under the supervision of the incorporators of the society.

1336 **Respondent's Exhibit 12**

H. R. 14330, SIXTY-FIFTH CONGRESS, THIRD SESSION

65TH CONGRESS, 3RD SESSION. H. R. 14330.

IN THE HOUSE OF REPRESENTATIVES

January 13, 1919.

Mr CHARLES B. SMITH introduced the following bill; which
1337 was referred to the Committee on the Judiciary and ordered to be printed

A BILL

To amend an Act entitled "*An Act to incorporate the American National Red Cross*," approved January fifth, nineteen hundred and five.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That
1338 section four of the Act entitled "An Act to incorporate the American National Red Cross," approved January fifth, nineteen hundred and five, is hereby amended to read as follows:

"SEC. 4. That from and after the passage of this Act it will be unlawful for any person within the jurisdiction of the United States to falsely or fraudulently hold himself out as or represent or pretend himself to be a member of or agent for the American National Red Cross for the purpose of soliciting, collecting, or receiving money or material or for any person to wear or display the sign of the Red Cross or any insignia colored in imitation thereof for the fraudulent purpose of inducing the belief that he is a member of or an agent for the American National Red Cross. It shall be un-

1339

lawful for any person, corporation, or association other than the American National Red Cross and its duly authorized employees and agents and the Army and Navy sanitary and hospital authorities of the United States for the purpose of trade or as an advertisement to induce the sale of any article whatsoever or for any business or charitable purpose to use within the territory of the United States of America and its exterior possessions the emblem of the Greek Red Cross on a white ground, or any sign or insignia made or colored in imitation thereof, or of the words "Red Cross" or "Geneva Cross" or any combination of these words. If any person violates the provision of this section he shall be deemed guilty of a misdemeanor, and upon conviction in any Federal court shall be liable to a fine of not less than $100 or more than $500, or imprisonment for a term not exceeding one year, or both, for each and every offense."

1340

371

1341

Respondent's Exhibit 13

REGISTERED TRADE-MARKS FOUND IN THE RECORDS OF THE UNITED STATES PATENT OFFICE.

No. of trade-mark	Name registered	Articles protected	Registered	Date since in use	Kind of cross	Words or color	Date of renewal
511	J. D. Wilder	Liquid slate, slate paper, etc.	Oct. 31, 1871	Duration of use not referred to	Christian	No color stated. "Wilder's liquid slate"	
517	Irad Fuller	Wines, liquors, etc.	Nov. 7, 1871	do	Maltese	No color stated	
1,416	Seymour McCullagh	Wines, liquors, beers, and mineral waters	Aug. 19, 1873	May 1872	Modified Greek	Red. 6 rods	
1,617	J. McI. Smith	Plaster	Feb. 3, 1874	Only about to use Jan. 16, 1874	Italian coat of arms	Not stated	
1,725	The Anderson Distillery Co.	Whisky	Apr. 14, 1874	Used 4 months prior to Apr. 3, 1874, and since	Templar	do	
2,035	A. Man & Co.	Tea	Oct. 20, 1874	Used for 1 year	similar to Maltese	Partly in bronze and black	
2,050	E. E. Lummus & Co.	Plows	Nov. 3, 1874	Just about to use, used since November 1874	Cross formed of stars	"Southern cross" with 6 stars between words preferably printed in black	
2,354	A. A. Plastridge	Mustard	Apr. 6, 1875	Not used only since April 1875	Similar to Maltese cross	None given	
2,588	J. Oakley	Soap	May 25, 1875	Used 1 month prior to May 1875	Maltese	Blue	
2,911	Heitef & Gans	Umbrellas and parasols	Sept. 7, 1875	Used since Aug. 6, 1875	do		
3,128	Sullivan & Burk		Nov. 9, 1875	Used since 1870			
3,631	Samuel Slater & Sons	Wigans and canbrics	Apr. 25, 1876	1866	Modified Maltese	"Bell Cross"	
4,021	Stephen J. Seneca	Hermetically sealed goods	Sept. 26, 1876	1875	Greek	do	
4,157	A. Man & Co.	Soap	Nov. 28, 1876	Used since October 1875			
4,312	T. Gill	do	Jan. 30, 1877	Used since March 1874			
4,591	E. W. Keeler	Twine, warp, yarn, etc.	May 1, 1877	Used since May 1877			
4,782	Robert W. Tailer	Wines	June 26, 1877	Used since May 23, 1877	St. Andrews' cross on shield		
4,794	The firm of W. Krause	Artificial stone and artificial stone pavements	do	Used since May 1877	Maltese	No color stated	
4,913	W. M. Olliffe	Pharmaceutical preparations	July 17, 1877	Used since 1871			
5,338	Smith & Wicks	Oysters, fruits, and vegetables	Nov. 20, 1877	Aug. 10, 1873	Maltese		
5,459	John Sterling	Medical compound	Dec. 25, 1877	Used since 1877			
5,592	Eureka Fire Hose Co.	Hydraulic hose	Jan. 29, 1878	August 1877	Greek	"Red Cross"	

Respondent's Exhibit 13

Registered trade-marks found in the records of the United States Patent Office—Continued

No. of trade-mark	Name registered	Articles protected	Registered	Date since in use	Kind of cross	Words or color	Date of renewal
5,647	Charles M. Fletcher	Medicinal preparations of cocoa-leaf	Feb. 12, 1878	Used since February 1878			
6,059	Eugene A. Du Puy	Medicinal articles	May 14, 1878	Used since June 1877			
6,263	J. B. Clere		June 18, 1878	Used since 1863			
6,391	Liggett & Myers Co.	Plug-tobacco	July 23, 1878	Used since June 15, 1878			
6,864	Excelsior Lye Co.	Domestic lye	Dec. 3, 1878	September 1878	Greek	Red	
7,754	John Nautz	Preparation for the hair	Oct. 28, 1879	Not used, proposes to use October 1879.			
7,786	George B. Browne	Medicine for skin diseases	Dec. 30, 1879	Not stated	Maltese	No color stated	
8,296	Roethlisberger & Gerber	Milk food	May 31, 1881	1877	Greek	White cross within red disk.	
8,419	J. Rogers & Sons (Ltd.)	Cutlery of all kinds	June 28, 1881	Used since 1764	Maltese	Various colors	
8,923	Hugo Berthold	Beef oil	Dec. 20, 1881	September 1877	do	No color stated	
9,018	Newton & Co.	Fire-bricks	Jan. 10, 1882	July 1, 1879	do	do	
9,372	T. R. Keator & Co.	Portland cement	May 16, 1882	March 1881	Modified Greek	Red	
9,599	The Boott Cotton Mills	Cotton goods	Aug. 8, 1882	March 1882	Greek	Cross as specified	
10,145	Charles Graham Bird	Wood dressings	Mar. 27, 1883	January 1883	Greek cross on American shield.	No color stated	
10,260	G. L. Beck	Medicinal preparations	May 8, 1883	Mar. 16, 1833	Greek	Red	
10,310	Lang, Bernheimer & Co.	Whiskey	May 29, 1883	1881	Modified Greek	No color stated	
10,445	Jules Berger	Certain table liquors	July 17, 1883	1840	Swiss	White	
10,451	Elnam & Co.	Medicines, particularly pills.	July 24, 1883	Feb. 8, 1879	Greek	White cross on red back.	
10,473	Spez (The Firm of)	Dentifrice	July 31, 1883	1868	Latin cross as specified	No color stated	
10,544	Winfree & Loyd	Plug tobacco	Aug. 21, 1883	1868	Latin	Red	
10,716	Wm. H. Railton	Table sauces	Nov. 13, 1883	1877	Maltese modified	No color, red border preferred.	
10,836	Jules Ferre	Medicinal preparation, particularly mixtures of meat, iron, and quinquina	Jan. 8, 1884	1875	Label having form of irregular cross.	Various colors on yellow background.	
10,861	Finlayson, Boustield & Co.	Linen thread	Jan. 22, 1884	1870	St. Andrews	Cross in red	
11,254	Edouard Pernod	Cherry brandy	June 10, 1884	1835	Swiss	White on red background	
11,283	do	Extrait d'absinthe	June 24, 1884	1835	do	White on red shield	
11,427	Aitken, Son & Co.	Millinery, goods, laces, ribbons, and trimmings	Aug. 19, 1884	Apr. 11, 1876	Maltese	No color stated	

Respondent's Exhibit 13

Registered trade-marks found in the ... ...

No. of trade-mark	Name registered	Articles protected	Registered	Date since in use
1,494	Hassey, Burns & Co. (Ltd.)	Shovels, spades, and scoops	Sept. 16, 1884	Mar. 22, 1884
1,526	Henry Hinrichs	Medicine for men, horses, and cattle	Sept. 30, 1884	Apr. 25, 1884
1,544	Leopold Ernst Ludwig Arp	Bitters	Oct. 7, 1884	1884
1,784	E. M. Freeley	Rubber cloth, textile fabrics composed partly of rubber, and enamel cloth	Dec. 16, 1884	May, 1884
1,889	The St. Paul Roller Mill Co.	Flour	Jan. 27, 1885	188
2,070	Ricker, Crombie & McLaren	Spices	Mar. 31, 1885	1884
2,213	E. Jeserich	Medicine in capsules	May 5, 1885	Dec. 1, 1884
2,293	Ricker, Crombie & McLaren	Coffee	June 2, 1885	Aug. 1, 1884
2,294	do	Baking powder	do	do
2,299	S. Bache & Co.	Mirror plates	June 9, 1885	1865
2,363	Knights of Labor Co-Operative Hat Co.	Fur and wool hats	June 30, 1885	Apr. 1, 1885
2,398	E. Clifford	Tooth powder	July 7, 1885	Jan. 1, 1884
2,760	C. Paillard & Co.	Music-boxes	Nov. 10, 1885	Aug. 1, 1884
2,834	Charles Pingel	Bitters	Dec. 8, 1885	Nov. 15, 1885
3,076	John Reardon & Sons	Hard soap	May 2, 1886	Nov. 15, 1885
3,205	E. W. Blatchford et al	Horse and cattle food	Apr. 20, 1886	January 1885
3,357	Les Fils de Cartier-Bresson	Cotton thread	June 1, 1886	1840
3,500	P. Scherer Co.	Mineral water and mineral salts	July 13, 1886	Feb. 5, 1886
3,511	Sommer, Richardson & Co.	Crackers	July 20, 1886	Mar. 30, 1886
3,512	do	Candy	do	do
3,655	William Henry Delano	Asphaltum cakes or blocks	Sept. 14, 1886	Dec. 28, 1872
3,694	Spratt's Ltd	Food for dogs, cats, and other animals	Sept. 28, 1886	Jan. 1, 1870
3,774	George T. Fry	Liquid specific for heart disease	Nov. 2, 1886	Sept. 8, 1886
3,792	Cooperative Foundry Co.	Stoves, ranges and furnaces	Nov. 9, 1886	June 1882

Respondent's Exhibit 13

Registered trade marks found in the records of the United States Patent Office—Continued

No. of trade mark	Name registered	Articles protected	Registered	Date since in use	Kind of cross	Words or color	Date of renewal
14,808	M. Michaelis & Son	Flavoring extracts	Feb. 28, 1887	Nov. 1, 1886	Maltese	do	
14,829	Charles Wright	Cough syrups	July 19, 1887	January 1886	do	do	
14,842	Charles B. Weston	Shaving tonic	Oct. 11, 1887	January 1887	do	No color stated	
15,007	The Carbonated Beverage Co.	Mineral water, soda water, kalwater and ginger ale	Dec. 6, 1887	April 1887	Dagmar	Double black line preferred	
15,025	H. E. Pearson	Mixture for boston brown bread and breakfast cakes	Dec. 13, 1887	Jan. 1, 1887	Maltese	No color stated	
15,061	Crompton Co.	Velvets and plushes	Dec. 27, 1887	Oct. 31, 1887	Greek	Red	
15,108	A. King & Co.	Spool cotton	Jan. 17, 1888	Oct. 1, 1887	Modified Latin cross on crest	No color stated	
15,109	do	do	do	do	Cross on coat of arms	do	
15,138	Jas. R. Isbell et al.	Medicines	Jan. 31, 1888	April 1887	Represents four hammers in cross formation	Dark or black on white or light background	
15,200	Leon Levy & Bros.	Hamburg embroideries	Feb. 28, 1888	Dec. 5, 1887	Greek	White cross on red background	
15,256	Paul Hartmann	Wood, wool, and white wool padding	Mar. 6, 1888	May 19, 1886	do	Red	
15,380	Isaac B. Kleinert	Dress shields	Apr. 24, 1888	February 1886	Maltese	No color stated	
15,540	Antoine Lagmann	Remedy for Diphtheria	May 29, 1888	May 1887	Cross, star, and crescent	do	
15,647	Thal & Howe	Vinegar	June 26, 1888	February 1888	Maltese	Red	
15,722	A. W. Wills & Son	Tools	July 24, 1888	Nov. 28, 1883	Modified Greek	"Red Cross" in Spanish	
15,799	Julius Maggi & Co.	Meat extracts	Aug. 21, 1888	Jan. 1, 1887	Greek	Red	
15,868	Francis W. Blacker	Boots and shoes	Oct. 30, 1888	June 1, 1888	Maltese cross coupled as specified	No color stated	
16,016	Philipp Hermann Fay	Mineral waters and lozenges prepared from mineral water	Nov. 20, 1888	Nov. 28, 1886	Dagmar cross surmounting a globe	do	
16,232	The New York Phosphate Co.	Baking powder	Jan. 29, 1889	September, 1888	Swiss	White on red background	
16,233	Charles Sands	Liniment	do	July 3, 1879	Seal as specified	No color stated	
16,424	S. Oppenheimer & Co.	Sausage coloring	Mar. 26, 1889	Dec. 10, 1888	Maltese	Any color	
16,979	James Martin & Co.	Cotton fabrics	Sept. 3, 1889	Jan. 14, 1889	do	Red or other	
17,029	Les Fils de Cartier-Bresson	Cotton lace	Sept. 17, 1889	1882	Modified Latin cross as specified	Gilt	

Respondent's Exhibit 13

Registered trade-marks found in the records of the United States Patent Office—Continued

No. of trade-mark	Name registered	Articles protected	Registered	Date given in use	Kind of cross	Words or color
17,114	Chichester Chemical Co.	Pills	Oct. 15, 1889	Oct. 20, 1887	Greek	"Red Cross"
17,203	T. M. Sinclair & Co.	Cooked tripe, hocks, feet and tongues	Nov. 19, 1889	1886	Maltese	do
17,425	Oscar Tomagno	Olive-oil, rape-seed oil, and other oils for burning and salad purposes.	Jan. 21, 1890	May 1887	Latin cross on shield	No color stated
17,516	Finlayson, Botsfield & Co.	Yarns and threads	Feb. 11, 1890	August 1869	St. Andrews	do
17,711	Norwood Manufacturing Co.	Kindling wood	Mar. 25, 1890	Nov. 7, 1889	Maltese	"Red Cross"
18,093	Thomas Salt & Co.	Malt liquors	July 1, 1890	1858	do	Red or other
18,827	Kast & Ehinger	Printing and lithographing inks.	Jan. 13, 1891	May 3, 1880	Shield as specified	No color stated
18,868	J. K. Krieg & Co.	Boots, shoes, and shoe laces.	Jan. 20, 1891	Nov. 1, 1889	Maltese	Red
19,051	Ritchie & Eason	Tracing cloth	Feb. 17, 1891	December 1883	Modified Latin cross as specified	No color stated
19,072	Enos F. Jones Chemical Co.	Baking powder	Feb. 24, 1891	Dec. 1, 1890	Greek cross as specified	do
19,358	Marshall & Co.	Linen thread	Apr. 14, 1891	Aug. 1, 1890	Maltese cross as specified	Black on buff or yellow preferred
19,737	J. K. Krieg & Co.	Button fasteners	June 16, 1891	Apr. 20, 1891	Maltese	Red
19,798	Henry N. Palmer	Bath robes	June 30, 1891	Jan. 1, 1889	do	"Red Cross"
20,268	Gayetty Paper Co.	Medicated toilet paper	Oct. 27, 1891	May 15, 1891	do	No color
21,103	Koenig Medicine Co.	Medicines	May 10, 1892	1887	Latin cross and anchor	do
21,306	N. W. Coin. Milling Co.	Wheat flour	June 14, 1892	July 1, 1891	Maltese	Red, or other
21,376	The Stanton Manufacturing Co.	Hard soap	June 28, 1892	Feb. 1, 1892	Maltese cross as specified	No color
21,728	Joseph Crossley	Enameled and buff building bricks or blocks.	Sept. 6, 1892	May 26, 1892	Cross as specified	do
22,014	Murphy, Hibben & Co.	Knit fabrics	Nov. 22, 1892	1892	Maltese	No color
22,052	Cooperative Foundry Co.	Stoves, ranges, furnaces	do	June 1882	do	Red
22,674	Arlington U. Betts	Rubber goods	Mar. 21, 1893	Apr. 15, 1892	Greek	"Red Cross"
22,744	Caroline E. Ely	Powdered washing compound.	Apr. 4, 1893	Jan. 30, 1893	Maltese cross combined with 6-pointed star	No color
22,890	B. F. Brown & Co.	Boot and shoe dressing.	Apr. 25, 1893	Jan. 1, 1893	Maltese cross combined with monogram	do

Respondent's Exhibit 13.

Registered trade-marks found in the records of the United States Patent Office—Continued

No. of trade-mark	Name registered	Articles protected	Registered	Date since in use	Kind of cross	Words or color
23,184	Consolidated Fastener Co.	Buttons, clasps and spring-fasteners for wearing apparel and gloves.	June 6, 1893	January 1880	Cross-shaped figure	do
23,605	George W. Southwick	Blacking and leather dressing	Sept. 12, 1893	February 1890	Maltese cross as background for words "Polar Bear brand".	do
23,618	Eureka Fire Hose Co.	Hydraulic and fire hose	Sept. 19, 1893	May 29, 1875	Greek	Usually red
23,746	John F. Broderick	Medicinal whisky for lung disease and debility.	Oct. 24, 1893	May 1891	Maltese	Black
24,051	Angier Chemical Co.	Medicines	Jan. 16, 1894	June 1, 1893	Greek cross within circle	No color
24,567	Jas. A. Hearn & Son	Ginghams	Apr. 24, 1894	1892	Greek	White cross within black diamond.
25,411	The Ossawan Mills Co.	Sash and curtain cords	Oct. 30, 1894	January 1880	Maltese (on crown)	Any color
25,789	New York Pharmacal Association.	Tablets to aid digestion	Jan. 1, 1895	Oct. 11, 1894	Maltese	No color
25,852	The Martin Dennis Chrome Tannage Co.	Chrome tannage liquor	Jan. 8, 1895	Oct. 12, 1894	do	do
25,866	Gus. V. Brecht Butchers' Supply Co.	Sheep casings	Jan. 15, 1895	July 1, 1894	do	"Red Cross"
26,268	Clarence Whitman & Co.	Diapers	Mar. 26, 1895	do	do	May be variously colored
26,372	Schoen & Sommer	Salt	Apr. 9, 1895	Jan. 2, 1895	do	"Red Cross"
26,607	A. H. Rice & Co.	Plain braids	June 18, 1895	January 1895	do	No color
26,711	Royal Cross Chemical & Odorless Cabinet Co.	Disinfectants and deodorizers.	do	Jan. 1, 1895	do	Royal cross
27,055	Mohawk Condensed Milk Co.	Condensed milk	Sept. 10, 1895	Feb. 1, 1892	do	"Red Cross"
27,211	Fabrik Von Maggi's Nahrungsmitteln Aktiengesellschaft.	Meat extracts	Nov. 12, 1895	Jan. 1, 1893	Greek	do
27,264	The Martin Dennis Chrome Tannage Co.	Leather dressings	Nov. 19, 1895	May 29, 1895	Maltese	No color
27,758	National Sewing Machine Co.	Bicycles	Feb. 4, 1896	Dec. 15, 1895	Passion	Immaterial
28,401	The R. Hoehn Co.	Thermometers	June 16, 1896	Feb. 1, 1896	Greek	Red
28,922	American Biscuit and Manufacturing Co.	Peanuts	Sept. 29, 1896	Mar. 30,	Maltese	"Red Cross"

Respondent's Exhibit 13

Registered trade-marks found in the records of the United States Patent Office—Continued

No. of trade-mark	Name registered	Articles protected	Registered	Date since in use	Kind of cross	
29,579	Eureka Fire Hose Co.	Hydraulic or fire hose	Feb. 23, 1897	1873	Greek	
30,428	American National Red Cross	Stationery	July 27, 1897	Aug. 22, 1864	do	Red
31,756	Charles L. Dorn	Pile remedy	June 28, 1898	Dec. 1, 1897	Modified Greek	Inmate
32,082	Ernst Hammesfahr, doing business as Gottlieb Hammesfahr.	Iron, steel, copper, zinc, Silver, German silver, tombak and similar alloys wrought into articles of various kinds, excluding such articles used by watchmakers, goldsmiths, and dentists.	Oct. 18, 1898	Apr. 28, 1898	Cross on pyramid	No colo
32,253	F. & A. H. Batcheller Co.	Elastic goring	Dec. 20, 1898	July 1896	Greek	"Red C
32,289	Lillian Meader Gilling	External and internal preparations for the skin.	Dec. 27, 1898	May 1, 1867	Cross and crescent	May be
32,525	Mary C. Whelan	Toilet preparations	Feb. 21, 1899	Aug. 1, 1898	Modified Greek	Red
33,149	Johnson & Johnson	Anti-septic dressing	June 27, 1899	April 1888	Modified Greek (2)	do
33,150	do	Plasters	do	do	Modified Greek	do
33,290	Canepa Bros.	Macaroni	Aug. 1, 1899	April 1872	Greek	"Red C
33,291	do	do	do	do	Greek (4)	do
33,311	do	do	Aug. 8, 1899	do	Greek	"do
33,324	F. Korbel & Bros.	Wines	do	July 1, 1898	do	do
33,537	Oscar S. Kulman	Brooms	Oct. 10, 1899	July 25, 1899	do	Red
33,538	James & Mayer Buggy Co.	Wheeled vehicles	do	March 1899	do	do
33,330	John A. Webster & Son	Bottles and syringes	Oct. 30, 1900	Sept. 1, 1900	do	do
35,412	Duquesne Distributing Co.	Mineral waters	Nov. 13, 1900	Dec. 17, 1897	do	do
36,109	Atlas Shear Co.	Shears and scissors	Mar. 19, 1901	Jan. 1, 1900	do	"Red C
36,325	Toiletine Manufacturing Co.	Disinfectants	Apr. 30, 1901	Jan. 21, 1901	Modified Greek	Red
37,139	William D. Rea	Pile cure	Oct. 1, 1901	July 1, 1899	Greek	"Red C
37,581	Romoc Co.	Certain named medicine	Dec. 31, 1901	June 1, 1899	Cross bearing word romoc	No colo
37,800	R. G. Marcy Manufacturing Co	Windmills, etc.	Feb. 11, 1902	Mar. 1, 1900	Maltese	"Red C
38,096	J. B. & S. M. Knowles Co.	Spoons	Apr. 15, 1902	July 1, 1901	None	do

Respondent's Exhibit 13

Registered trade-marks found in the records of the United States Patent Office—Continued

No. of trade-mark	Name registered	Articles protected	Registered	Date sin e in use	Kind of cross	Words or color	Date renews
38,192	Daggett & Ramsdell	Cold cream	Apr. 29, 1902	Jan. P. 1900	Cross shaped panel	No color	
38,426	John F. Ahrens	Whisky	June 10, 1902	Dec. 8, 1892	Maltese	"Red Cross"	
38,549	The National Haircomb Co.	Medicinal compound for restoring hair	July 1, 1902	Jan. 1, 1899	do	No color	
38,570	Florence Manufacturing Co.	Brushes	July 8, 1902	Apr. 21, 1902	Greek	Red	
38,587	P. Goldsmith's Sons	Certain named sporting goods.	do	Sept. 23, 1901	Maltese	No color	
38,760	Sandner & Rinn Sisters	Remedial paste for burns, scalds, wounds, etc.	Aug. 12, 1902	Oct. 12, 1899	Greek	do	
38,798	Hannah Welch	Salves	Aug. 19, 1902	Dec. 16, 1871	Cross irregular wings	do	
38,878	Meinecke & Co.	Hospital and sick-room appliances.	Sept. 9, 1902	Jan. 1, 1902	Greek	do	
38,921	Halls Chronic Cough Cure Co.	Medicines for pulmonary troubles and diseases of the blood.	Sept. 23, 1902	Aug. 13, 1901	Cross as specified	Black	
39,325	Hamilton Disinfectant Works.	Disinfecting material	Nov. 18, 1902	March 1883	Greek	"Red Cross"	
39,415	The R. Hoehn Co.	Thermometers, barometers, and hydrometers	Dec. 2, 1902	Feb. 1, 1896	do	No color	
39,453	W. D. King & Co.	Remedy for cure of certain named diseases.	Dec. 9, 1902	May 1, 1901	Greek cross with letter "C"	do	
40,305	Charles F. Whitehurst	Insect powder	May 12, 1903	Mar. 20, 1903	None	"Red Cross"	
40,661	American Net & Twine Co.	Fish netting	June 30, 1903	May 5, 1903	Greek	do	
41,017	Rouse, Hempstone & Co.	Shirts, collars, and cuffs	Sept. 1, 1903	July 25, 1903	Maltese	do	
42,326	Richard F. Shimanovsky	Herb tea	Apr. 5, 1904	October 1899	Greek cross with letter "S"	No color	
42,675	American Felt Co.	Musical instrument wire.	May 24, 1904	1900	Modified Greek	Red	
43,163	Andrea Agosto	Olive oil	Aug. 16, 1904	Jan. 1, 1904	Greek	"Red Cross"	
43,386	Emergency Accident Supply Co.	Emergency advertising cabinet.	Sept. 20, 1904	April 1904	do	Red	
43,540	The Winship Chemical Co.	Salve used as remedy for burns, scalds, and skin diseases.	Oct. 18, 1904	1864	White cross on field of green.	White	
44,810	Seabury & Johnson	Surgical silk, etc.	July 25, 1905	January 1886	Greek	Red	
45,891	Glen Alum Coal Co.	Coal	Aug. 29, 1905	January 1905	Maltese	Red	1925
46,037	M. Michaelis & Sons	Flavoring extracts	Sept. 5, 1905	November 1886	do	"Red Cross"	

Respondent's Exhibit 13

Registered trade-marks found in the records of the United States Patent Office—Continued

No. of trade-mark	Name registered	Articles protected	Registered	Date since in use	Kind of gross	Wreath
46,182	Eureka Fire Hose Co.	Fabric hose	Sept. 12, 1905	1875	Greek	do
47,955	Marveline Co.	Skin preparation	Nov. 28, 1905	Jan. 1, 1905	do	Red
48,080	William T. Shute	Canned fish	Dec. 5, 1905	1885	Maltese	Red Cross
48,192	The Wm. Bergenthal Co.	Brandy	Dec. 12, 1905	1896	Greek	do
48,667	Sands, Taylor & Wood Co.	Wheat flour	Jan. 9, 1906	October 1896	do	Maple state
49,634	Chattanooga Paint Co.	Mineral paint	Feb. 13, 1906	Jan. 4, 1892	Maltese	Red
50,060	The Jno. B. Canepa Co.	Cereals	Feb. 27, 1906	April 1872	Greek	Red
50,103	The Russ Co.	Laundry bluing	Mar. 6, 1906	Sept. 15, 1893	Modified Greek	Red Cross
50,396	The Jno. B. Canepa Co.	Cereals	Mar. 13, 1906	April 1872	None	do
50,470	Charles Loonen	Tooth brushes	Mar. 20, 1906	Feb. 11, 1899	Greek	do
52,258	Archie F. Baird	Toilet paper	May 8, 1906	Oct. 1, 1901	None	do
52,782	Liebig Extract Co.	Beef extract	May 15, 1906	Nov. 22, 1901	Greek	Red
53,573	Southern Spring Bed Co.	Mattresses	June 5, 1906	November 1904	do	Red Cross
54,249	Johnson & Johnson	Suspensory bandages	June 26, 1906	1893	do	Red
54,308	do	Surgical plasters	do	1887	do	do
54,309	do	Catheters and bougies	do	1893	do	do
54,927	American Pin Co.	Safety pins	Aug. 7, 1906	Aug. 1, 1901	do	do
55,053	Cooperative Foundry Co.	Stoves and heaters	do	June 1882	Maltese	do
55,054	do	do	do	do	None	Red Cross
55,208	Johnson & Johnson	Dental absorbents	do	1897	Greek	Red
56,198	Virginia-Carolina Chemical Co.	Fertilizers	Aug. 28, 1906	1898	do	Red Cross
56,828	The Jno. B. Canepa Co.	Macaroni, etc.	Oct. 23, 1906	April 1872	Greek	do
57,526	American Washboard Co.	Washboards	Nov. 13, 1906	1885	None	do
58,950	The Hospital Supply Co.	Surgical apparatus	Dec. 25, 1906	September 1906	do	do
62,651	G. A. Craven & Co.	Surgical bandages	May 21, 1907	Sept. 15, 1906	do	Green cross
67,142	The Peoples Chemical Co.	Medicinal tonic	Jan. 21, 1908	Apr. 25, 1904	do	Red Cross
67,547	Emile Brunor	Certain chemicals	Feb. 11, 1908	Mar. 1, 1880	do	do
82,193	Albany Perforated Wrapping Paper Co. (A. P. W. Paper Co., Inc. by change of name).	Toilet paper	June 13, 1911	1897	do	do
86,240	Rothschild, Meyers & Co.	Certain surgical appliances.	Apr. 23, 1912	June 1880	Greek	Greek

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

No. 169. October Term, 1944

Argued April 13, 1945.—Decided May 17, 1945

A. P. W. PAPER COMPANY, INC., PETITIONER

v.

FEDERAL TRADE COMMISSION, RESPONDENT

Before SWAN, AUGUSTUS N. HAND and CLARK, Circuit Judges.

Petition to Review an Order of the Federal Trade Commission

A. P. W. Paper Company, Inc., petitions for review of an order of the Federal Trade Commission directing the petitioner to cease and desist from using the words "Red Cross" and using or displaying the mark of a Greek red cross on or in connection with its products, or in any manner representing that there is any connection between its products and the American National Red Cross organization.

Order reversed and cause remanded.

Sullivan & Cromwell, attorneys for petitioner, Edward H. Green and E. H. Sykes, of counsel.

W. T. Kelley, Chief Counsel, Joseph J. Smith, Jr., Assistant Chief Counsel, and Donovan R. Divet, Special Attorney for respondent.

SWAN, Circuit Judge:

By a proceeding initiated in 1942 the Commission charged the petitioner with a violation of section 5 of the Federal Trade Commission Act, 15 U. S. C. A. § 45 (a) 1, in using the words "Red Cross" and the Greek red cross emblem to designate certain of its products. The petitioner is a New York corporation engaged in the business of selling toilet tissues and paper towels in interstate commerce. Among its products are certain brands designated by it as "Red Cross Toilet Tissue" and "Red Cross Towels". On the wrappers of each package or roll, as well as in the petitioner's advertisements for these brands, the words "Red Cross" and the Greek red cross emblem are prominently displayed. Toilet tissues have been marketed by the petitioner under such trade name and emblem since 1897 and paper towels since 1933. In 1911 the trade-mark was registered in the Patent Office, and the regis-

tration was extended to cover paper towels on an application filed in October 1933. The wrappers of each package or roll and the petitioner's advertisements contain additional words showing that the goods are the petitioner's product but these words catch the eye less readily than do the trade name and emblem.

The Commission found that the name "Red Cross" and the emblem of the Greek red cross on a white ground have long been associated in the minds of the public with the American National Red Cross and that the petitioner's use of the words "Red Cross" and the emblem has the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the mistaken belief that the petitioner's goods are sponsored or approved by, or in some manner connected with, the American Red Cross organization. The Commission further found that the additional words on the wrappers showing manufacture by the petitioner and registration of the trade name and mark are insufficient to correct the erroneous impression created through use of the name and emblem. Accordingly the Commission entered the order which the petitioner now challenges.

If success of the attack upon the order turned on maintaining the contention that the Commission's findings are not supported by substantial evidence, the petitioner would fail. Whether the petitioner's use of the words and emblem has the tendency and capacity to mislead the public presents a question of fact as to which the Commission's judgment, if not arbitrary, should be accepted. See Brougham v. Blanton Mfg. Co., 249 U. S. 495, 499; Leach v. Carlisle, 258 U. S. 138, 140; Herzfeld v. Federal Trade Commission, 140 F. 2d 207, 209 (C. C. A. 2); Zenith Radio Corp. v. Federal Trade Commission, 143 F. 2d 29, 31 (C. C. A. 7). In the case at bar the Commission's inference is supported by the testimony of witnesses that the Red Cross words and emblem indicated to them that the goods were in some way approved by or associated with the American Red Cross. That more careful observers were not so misled is, of course, immaterial, for the statute is intended to protect the unthinking and credulous members of the public as well as the more sophisticated and intelligent. Federal Trade Commission v. Standard Education Society, 302 U. S. 112, 116; Charles of the Ritz Dist. Corp. v. Federal Trade Commission, 143 F. 2d 676, 679 (C. C. A. 2).

Decision must turn on the validity of the petitioner's contention that its use of the trade-mark is expressly permitted by the Act of January 5, 1905, 33 Stat. 599, as amended in 1910, 36 Stat. 604. Section 1 of the Act created a corporation by the name of "The American National Red Cross"; section 2 defined its powers—among others, the right to use "as an emblem and badge a Greek red cross on a white ground"; section 3 designated the purposes of the

corporation; and section 4 declared it unlawful for any other corporation, "not now lawfully entitled to use the sign of the Red Cross, hereafter to use such sign * * * for the purposes of trade. . .", and made the violation of "the provisions of this section" a misdemeanor punishable by fine or imprisonment, or both, any fine so collected to be paid to the American National Red Cross. In 1910 section 4 was amended. After declaring the prohibition against use of the red cross emblem or the words "Red Cross," a proviso was inserted in these words:

"Provided, however, that no person, corporation or association that actually used or whose assignor actually used the said emblem, sign, insignia or words for any lawful purpose prior to January fifth, nineteen hundred and five, shall be deemed forbidden by this Act to continue the use thereof for the same purpose and for the same class of goods."

We think it clear that the exception in the original section 4 of persons "now lawfully entitled to use such sign" and the even more specific language of the proviso in the 1910 amendment indicate the intention of Congress to permit the continued use of the Red Cross words and symbol to those who were lawfully using them prior to January 5, 1905. Further support for this view may be found in the committee report* on the 1910 amendment in the statement that "the section as amended gives the American Red Cross the fullest protection it is possible to afford by Congressional enactment, and at the same time amply protects the concerns possessing vested property rights in the emblem." Subsequent Congressional action is also significant. In 1919 a bill was introduced (H. R. 14339, 65th Cong., 3rd Sess., reprinted in Hearings before the Committee on Foreign Affairs on H. R. 6911, 77th Cong., 2d Sess., p. 374) to amend section 4 by striking out the proviso and making the prohibition general, but it failed of passage. In 1942 another bill (S. 469, 77th Cong., 2d Sess.) was introduced authorizing pre-1905 users "to continue to use the Red Cross" until July 1, 1947 with a tapering off period until July 1, 1953. This bill was passed by the Senate and sent to the House. The House Committee reported the bill to the House with minor amendments, and its report recognizes "that under existing law there are legal uses of the symbol by commercial users." (Report No. 2054, 78th Cong., 2d Sess., p. 4.) However, Congress adjourned before the bill was reached on the calendar. We think that this legislative history, as well as the statutory language, supports the petitioner's contention that its right to continue the use of the Red Cross words and symbol has received congressional recognition.

*Report No. 1256, 61st Cong., 2d Sess., reprinted in Hearings before the Committee on Foreign Affairs on H. R. 6911, 77th Cong., 2d Sess., p. 345, at 347.

The Commission advances two arguments in opposition. It says first that since the Red Cross name and symbol have long been familiar to the American public it may fairly be inferred that the petitioner's commercial use prior to 1905 was just as misleading as it is now; hence its pre-1905 use was not for a "lawful purpose" and the petitioner does not come within the proviso to section 4. This proves too much. It would be equally true, as counsel conceded upon oral argument, of any of the many pre-1905 commercial users of the Red Cross words and symbol; hence the 1910 proviso would be meaningless. Secondly, the Commission argues that section 4 does not confer upon pre-1905 users a right to continue to use the Red Cross words and emblem, but merely exempts them from criminal liability for continuing such use; and, if construed broadly enough to permit a use which misleads the public, it was, to this extent, impliedly repealed by the 1938 amendments to the Federal Trade Commission Act which extended the prohibition of section 5 so as to include not only unfair methods of competition in commerce but also "unfair or deceptive acts or practices in commerce." 52 Stat. 111; 15 U. S. C. § 45. That repeals by implication are not favored and that two statutes dealing with related subject matter should, if possible, be so construed as to give effect to both are principles of statutory construction too elementary to require the citation of authorities. Both principles may be recognized in the case at bar by holding that the Red Cross Act gives the petitioner the right to continue to use the Red Cross words and symbol but the Federal Trade Commission Act empowers the respondent to prevent their use in a deceptive manner. In other words, the Commission may not absolutely forbid the use of the words and symbol to pre-1905 lawful users but may require them to state, so plainly as to avoid the creation of misleading inferences by such use, that the goods are not sponsored, approved, or in any manner connected with the American National Red Cross. The present order goes beyond permissible limits in forbidding any use of the words and mark. Accordingly the order must be reversed and the cause remanded to the Commission for the entry of an order which will not infringe the rights of the petitioner under the Red Cross Act as above construed. We do not ourselves attempt to formulate the new order because our recent decisions have held that the measure of the necessary relief is peculiarly within the competence of the Commission. Herzfeld v. Federal Trade Comm., 140 F. 2d 207, 209; Parke, Austin & Lipscomb v. Federal Trade Comm., 142 F. 2d 437, 442, cert. den. Oct. 16, 1944; Charles of the Ritz Dist. Corp. v. Federal Trade Comm., 143 F. 2d 676, 680.

Order reversed and cause remanded for further proceedings in conformity with this opinion.

CLARK, Circuit Judge (dissenting):

The net effect of our decision is that the remedial measures which the Commission may order to stop the deception of the public here found are limited to additional explanatory matter concerning petitioner's use of the well-known Red Cross emblem, and cannot reach that use itself. Had the Commission found such remedy adequate and ordered it, I should have viewed the result with equanimity as a presumptively fair adjustment of public and private rights. But having in mind our quite limited control over the Commission's decision as to the appropriate remedies to be ordered against deceptive practices, I think we are bound to recognize the obvious fact that it is the Greek Red Cross which to the public symbolizes the Society itself; and mere explanatory material, however carefully framed, will be no more effective in the future than it has been in the past. In the nature of things, our decision must be one not of discretion, but of law; and as such it suggests potentially grave limitations, by the process of implied exception, upon the far-reaching Federal Trade Commission Act of 1938.

As is well known, it had long been considered a defect of the original Federal Trade Commission Act that it reached only unfair competition or unfair competitive trade practices, and not, more directly, deception of the consuming public. Hence the 1938 amendments which also made unlawful "unfair or deceptive acts or practices in commerce," 15 U. S. C. A. § 45 (a), were an important enlargement of the Commission's jurisdiction. Cf. Fresh Grown Preserve Corp. v. F. T. C., 2 Cir., 125 F. 2d 917, 919. That amendatory Act contains its own exceptions, and thus under well-known rules makes less possible the implication of other exceptions not stated. Bondurant v. Watson, 103 U. S. 281, 288; Amy v. City of Watertown, 130 U. S. 320, 323, 324; Brown v. Duchesne, 60 U. S. 183, 195, 198. The opinion, I think, inverts the problem when it overlooks this rule to say that there is no repeal by implication of the Red Cross Act of 1910 by the 1938 Act. Since they subserve quite different ends, and do not overlap, there is no question of implied repeal. The 1905 Act and its amendment of 1910 were grants of charter to the American National Red Cross, coupled with penal provisions and a limited exception therefrom to protect its official name; compare the significant direction that fines collected for violation of the statute should be paid to the Society. Certainly this shows no legislative intent to legalize deception of the public, which was not then a matter of federal administrative concern. Of course, the later bills designed to limit and eventually to end the limited exception from prosecution con-

tained in the 1910 Act naturally would have less scope than the original Act, and the legislative discussions and committee reports show nothing else. I think the opinion confuses two separate problems, viz., "legal uses of the symbol" as against the society and the United States permitted by the special legislation of 1910 with deception of the consuming public prohibited by the broad regulatory Act of 1938. Hence I think we lack power to set aside the remedy here chosen by the Commission.

In the United States Circuit Court of Appeals for the Second Circuit

No. 19168

A. P. W. Paper Company, Inc., petitioner

v.

Federal Trade Commission, respondent

Final Decree Reversing and Remanding Order to Cease and Desist

A. P. W. Paper Company, Inc., a corporation of the State of New York, petitioner herein, having filed in this Court on February 16, 1944, its petition to review and set aside an order to cease and desist issued against it on January 7, 1944, by the Federal Trade Commission, respondent, in a proceeding before the said respondent entitled "In the Matter of A. P. W. Paper Company, Inc., a corporation, Docket No. 4747"; and a copy of said petition having been served upon the respondent; and the respondent having thereafter certified and filed herein, as required by the Federal Trade Commission Act, a transcript of the entire record in said proceeding; and the matter having been heard by this Court on briefs and oral argument; and this Court having thereafter fully considered the matter and having rendered its decision on May 17, 1945, reversing said order to cease and desist and remanding the cause for further proceedings in conformity with the opinion of this Court.

Now, Therefore, It is Hereby Ordered, Adjudged and Decreed that the aforesaid petition to review be and the same hereby is granted; and that the said order to cease and desist be and the same hereby is reversed and the cause remanded to the Federal Trade Commission for further proceedings in conformity with the opinion of this Court, and it is further

Ordered that this Court retains jurisdiction in this cause to enter such further orders herein from time to time as may become necessary to enforce compliance in every respect with this decree.

By the Court.

THOMAS W. SWAN,
AUGUSTUS N. HAND,
United States Circuit Judges.

Dated New York, June 4, 1945.

United States Circuit Court of Appeals, Second Circuit. A. P. W. Paper Company, Inc., v. Federal Trade Commission. Final Decree Reversing and Remanding Cause. United States Circuit Court of Appeals, Second Circuit. Filed June 5, 1945. Alexander M. Bell, Clerk.

United States Circuit Court of Appeals for the Second Circuit

No. 19168

A. P. W. PAPER COMPANY, INC., PETITIONER

vs.

FEDERAL TRADE COMMISSION, RESPONDENT

Nunc pro tunc order correcting final decree

Pursuant to agreement of counsel it is ORDERED that the words "as required by the Clayton Act," appearing in the Court's Final Decree Reversing and Remanding Order to Cease and Desist, which said decree was entered herein on June 5, 1945, be and they hereby are corrected, *nunc pro tunc* as of June 5, 1945, to read as follows, to wit: "as required by the Federal Trade Commission Act."

Ordered this 5th day of June 1945.

THOMAS W. SWAN,
AUGUSTUS N. HAND,
United States Circuit Judges.

Counsel for petitioner and counsel for respondent to hereby consent and agree to the entry of the above and foregoing order.

This June 15, 1945.

SULLIVAN & CROMWELL,
By GEOFFREY H. SYKES,
Counsel for Petitioner.

JOSEPH J. SMITH, JR.,
Assistant Chief Counsel,
Counsel for Respondent.

United States Circuit Court of Appeals, Second Circuit. A. P. W. Paper Company, Inc. v. Federal Trade Commission. Nunc pro tunc order correcting final decree. United States Circuit Court of Appeals, Second Circuit. Filed June 18, 1945. Alexander M. Bell, Clerk.

UNITED STATES OF AMERICA,
Southern District of New York.

I, Alexander M. Bell, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby certify that the foregoing pages, numbered from 1 to 470, inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the case of A. P. W. Paper Company, Inc., Petitioner v. Federal Trade Commission, Respondent, as the same remain of record and on file in my office.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 27th day of July, in the year of our Lord one thousand nine hundred and forty-five, and of the Independence of the said United States the one hundred and seventieth.

[SEAL]

(8) ALEXANDER M. BELL, *Clerk.*

FILE COPY

AUG 13 1945

INDEX

	Page
Opinion below	1
Jurisdiction	2
Question presented	2
Statutes involved	2
Statement	5
Specification of errors to be urged	9
Reasons for granting the writ	9
Conclusion	14

CITATIONS

Cases:	
Charles of the Ritz Distributors Corp. v. *Federal Trade Commission*, 143 F. 2d 676	11
Corn Products Refining Co. v. *Federal Trade Commission*, No. 680, Oct. Term 1944	12
El Moro Cigar Co. v. *Federal Trade Commission*, 107 F. 2d 429	11
Federal Trade Commission v. *Algoma Lumber Co.*, 291 U. S. 67	11, 14
Helvering v. *Clifford*, 309 U. S. 331	12
Herzfeld v. *Federal Trade Commission*, 140 F. 2d 207	14
Parke, Austin & Lipscomb, Inc. v. *Federal Trade Commission*, 142 F. 2d 437, certiorari denied, 323 U. S. 753	14
Statutes:	
Act of June 6, 1900, 31 Stat. 277	6
Act of June 23, 1910, 36 Stat. 604, 36 U. S. C. 4	4, 7
American National Red Cross Act of January 5, 1905, Section 4, 33 Stat. 600, 36 U. S. C. 4	3, 7
Federal Trade Commission Act of September 26, 1914, Section 5 (a), 38 Stat. 719, as amended by the Act of March 21, 1938, 52 Stat. 111, 15 U. S. C. 45 (a)	2
Congressional Material:	
Hearings before House Committee on Foreign Affairs on H. R. 6911, 77th Cong., 2d sess.	12
H. Rep. 2054, 78th Cong., 2d sess., 5-6	13
H. R. 7420, 77th Cong., 2d sess.	12
H. R. 14330, 65th Cong., 3d sess.	12
S. 469, 78th Cong., 2d sess.	12

661169—45

In the Supreme Court of the United States

OCTOBER TERM, 1945

No. ——

FEDERAL TRADE COMMISSION, PETITIONER

v.

A. P. W. PAPER COMPANY, INC.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

The Acting Solicitor General prays that a writ of certiorari be issued to review a decree of the Circuit Court of Appeals for the Second Circuit entered in this cause on June 5, 1945, which reversed an order of the Federal Trade Commission requiring the respondent to cease and desist from certain unfair or deceptive acts or practices, and remanded the cause to the Commission for further proceedings in conformity with the court's opinion.

OPINION BELOW

The opinion of the Circuit Court of Appeals (R. 458–463) is reported in 149 F. 2d 424.

JURISDICTION

The decree of the Circuit Court of Appeals was entered on June 5, 1945 (R. 464). The jurisdiction of this Court is invoked under Section 5 of the Federal Trade Commission Act as amended, 52 Stat. 111, 15 U. S. C. 45, and Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether Section 4 of the Act of January 5, 1905, as amended in 1910, which prohibits persons other than the American National Red Cross from using the words "Red Cross" or the sign of the Greek red cross but excludes from this prohibition those who had used these words or symbol prior to January 5, 1905, confers upon such prior users a right, excepted from the prohibitions of the Federal Trade Commission Act as amended, to employ these words and symbol as an unfair or deceptive act or practice in interstate commerce.

STATUTES INVOLVED

Section 5 (a) of the Federal Trade Commission Act of September 26, 1914, 38 Stat. 719, as amended by the Act of March 21, 1938, 52 Stat. 111, 15 U. S. C. 45 (a), provides in part:

> Unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce, are hereby declared unlawful.

> The Commission is hereby empowered and directed to prevent persons, partnerships, or corporations * * * from using unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce.

Section 4 of the American National Red Cross Act of January 5, 1905, 33 Stat. 600, 36 U. S. C. A. 4 (and Historical Note), provides as follows:

> That from and after the passage of this Act it shall be unlawful for any person within the jurisdiction of the United States to falsely and fraudulently hold himself out as, or represent or pretend himself to be, a member of, or an agent for, the American National Red Cross, for the purpose of soliciting, collecting, or receiving money or material; or for any person to wear or display the sign of the Red Cross, or any insignia colored in imitation thereof for the fraudulent purpose of inducing the belief that he is a member of, or an agent for, the American National Red Cross. Nor shall it be lawful for any person or corporation, other than the Red Cross of America, not now lawfully entitled to use the sign of the Red Cross, hereafter to use such sign or any insignia colored in imitation thereof for the purposes of trade or as an advertisement to induce the sale of any article whatsoever. If any person violates the provisions of this section, he shall be guilty of a misdemeanor and shall be liable to a fine of not less than one nor more than five hun-

> dred dollars, or imprisonment for a term not exceeding one year, or both, for each and every offense. The fine so collected shall be paid to the American National Red Cross.

The Act of June 23, 1910, 36 Stat. 604, 36 U. S. C. 4, amended the above section by (1) omitting the last sentence and (2) substituting the following for the second sentence:

> It shall be unlawful for any person, corporation, or association other than the American National Red Cross and its duly authorized employees and agents and the army and navy sanitary and hospital authorities of the United States for the purpose of trade or as an advertisement to induce the sale of any article whatsoever or for any business or charitable purpose to use within the territory of the United States of America and its exterior possessions the emblem of the Greek Red Cross on a white ground, or any sign or insignia made or colored in imitation thereof, or of the words "Red Cross" or "Geneva Cross" or any combination of these words: *Provided, however,* That no person, corporation, or association that actually used or whose assignor actually used the said emblem, sign, insignia, or words for any lawful purpose prior to January fifth, nineteen hundred and five, shall be deemed forbidden by this Act to continue the use thereof for the same purpose and for the same class of goods.

STATEMENT

The Federal Trade Commission, after a hearing on a complaint which it had issued against respondent under Section 5 of the Federal Trade Commission Act, made findings of fact which the court below found to be sustained by the evidence (R. 459). Among the facts found by the Commission, the following are deemed pertinent:

Respondent, which distributes its products throughout the United States, manufactures various brands of toilet tissues and paper towels, including brands which it designates and widely advertises as "Red Cross Toilet Tissue" and "Red Cross Towels." On each package or roll the words "Red Cross" and the Greek red cross are prominently displayed.[1] The words and the cross are registered with the Patent Office as a trade-mark and the trade-mark has been used in marketing the toilet tissue since 1897 and in marketing the paper towels since 1933. (R. 39–40; Comm. Exs. 1–3, printed following R. 358.)

Respondent's use of the foregoing name and symbol tends to deceive a substantial part of the purchasing public and to induce the erroneous belief that the products in question are sponsored or approved by the American Red Cross, are used

[1] Examples of the rolls and packages were before the court below as original exhibits (Comm. Exs. 7–12, R. 359–360). The prominence given the Red Cross name and symbol is shown by two of respondent's advertisements (Comm. Exs. 4–5, printed following R. 358).

by that organization or manufactured according to its sanitary standards, or that it is financially interested in their sale (R. 46, 49).[2] The statement on the products that they are made by respondent does not serve to correct such misconception (R. 47).

The Commission's findings also give the history and background of the American National Red Cross organization and set forth the legislative provisions dealing with protection of the Red Cross name and symbol.

The organization known as the Red Cross had its origin in a treaty drafted at an international convention in Geneva, Switzerland, in 1864 (and ratified by the United States in 1882) to provide for aid to soldiers wounded in battle and for using in this connection a distinctive and uniform flag consisting of a red cross on a white background (R. 40–41, 42). Since 1881, when its predecessor was first incorporated under the laws of the District of Columbia, the American National Red Cross has used the words "Red Cross" and the Greek red cross on a white ground to identify its organization and activities (R. 43). It was incorporated by Act of Congress of June 6, 1900, 31 Stat. 277, and reincorporated by the American National Red Cross Act of January 5, 1905 (R. 42). The latter statute (36 U. S. C. 1–6, 8) defines the organization's purposes and powers, es-

[2] 15 witnesses so testified (R. 47).

tablishes the manner in which the members of its governing body shall be appointed, and authorizes it to use the Red Cross emblem adopted by the Geneva convention (R. 42–43).

Section 4 of the 1905 Act prohibited use of the Red Cross emblem for purposes of trade by anyone not then lawfully entitled to use it and made violation of the section a misdemeanor punishable by fine and imprisonment (R. 44). The Act of June 23, 1910, amended Section 4 by bringing within the prohibition use of the words "Red Cross" and use of the Red Cross name or symbol for any business or charitable purpose and, as in the earlier statute, exempted from the prohibition those whose use of the name or symbol antedated January 5, 1905 (R. 44–45).

The Commission concluded that the acts and practices of respondent constitute unfair and deceptive acts and practices in interstate commerce (R. 49–50) and the Commission issued an order prohibiting respondent from using the Red Cross symbol on its products and the words "Red Cross" to designate them (R. 52).

On respondent's petition to review the Commission's order, the court below held that the findings of the Commission were supported by evi-

---

[5] Of the 18 members of this body, the President appoints six, of whom he designates one as chairman and names one each from the Departments of State, War, Navy, Treasury and Justice (R. 42).

dence and that its findings established practices which, apart from the effect of the Act of January 5, 1905, as amended, clearly fell within the prohibitions of the Federal Trade Commission Act. But the court, pointing out that Congress had excluded pre-1905 users from the prohibition against use of the Red Cross name and symbol embodied in the Red Cross statute, construed this legislation as conferring upon such prior users a right of continuing use which survived, and therefore limited, the subsequent Congressional condemnation by the Federal Trade Commission Act of unfair or deceptive acts or practices in interstate commerce. The court, attempting to reconcile this construction of the Red Cross statute with the Federal Trade Commission Act, concluded that the Commission was without power to forbid use of the Red Cross name or symbol to pre-1905 users but that the Commission was empowered to grant other appropriate relief against their use of the name or symbol "in a deceptive manner." The court accordingly reversed the Commission's order and remanded the case to the Commission for the entry of a new order conforming to the court's opinion." (R. 461.)

Judge Clark, dissenting from this holding, gave as grounds therefor that an exception from a broad regulatory statute was not to be implied merely because the prohibitions of a prior statute having a wholly different purpose—protecting

the interests of the organization incorporated as the American National Red Cross—were limited in scope (R. 462–463).

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred—

(1) In holding that the American Red Cross Act of January 5, 1905, as amended confers upon those who had used the words "Red Cross" and its symbol prior to January 5, 1905, a right of continuing use which prevails against the subsequent prohibition, by the Federal Trade Commission Act as amended, of unfair or deceptive acts or practices in interstate commerce.

(2) In holding that the Federal Trade Commission Act does not empower the Federal Trade Commission, in the case of a corporation which had used the words "Red Cross" and the Red Cross symbol prior to January 5, 1905, and which currently employed such words and symbol as unfair or deceptive acts or practices in interstate commerce, to grant relief against such unfair or deceptive acts or practices by forbidding use of the words "Red Cross" and its symbol.

(3) In reversing the order of the Federal Trade Commission.

REASONS FOR GRANTING THE WRIT

The Government submits that the decision of the court below is clearly erroneous. The sole purpose of Section 4 of the Red Cross statute is

to protect the interests of the organization incorporated as the American National Red Cross, by prohibiting others from using the Red Cross name and its emblem. The exclusion from this prohibition of those who, prior to enactment of this statute, had lawfully used the name or emblem represents a balancing of the equities of these prior users against the injury to the Red Cross organization through continuation of such use. Such exemption in no way indicates that Congress intended to grant to the prior users a special and continuing immunity from general regulatory legislation later adopted by Congress for the purpose of protecting the consuming public against deception.

Section 4 of the Red Cross statute absolutely prohibits, as to those to whom it applies, use of the words "Red Cross" and use of its emblem. The Federal Trade Commission Act, on the other hand, makes use of these words or emblem unlawful only when they are used as an unfair method of competition or an unfair or deceptive act or practice in commerce. Since the two statutes are divergent both in purpose and in their substantive provisions this is not a case, as the court below seemed to think that it was, where the provisions of two statutes will be in conflict unless the court reads into the later statute, by implication, an exception or exemption corresponding to that granted by the earlier statute.

A trade name which is misleading to purchasers does not, by reason of its long use, obtain immunity from the prohibitions of the Federal Trade Commission Act and the Commission may, in a proceeding under the Act, lawfully ban further use of such name.[4] And registration of a trademark with the United States Patent Office "does not prevent its use from falling within the prohibition of the Federal Trade Commission Act." *Charles of the Ritz Distributors Corp.* v. *Federal Trade Commission*, 143 F. 2d 676, 679, and cases cited. Congress, by the Trade Commission Act, therefore chose not to make long-continued prior use a ground for immunity from the Act's general prohibitions. It would certainly be anomalous if the rule should be otherwise only when the trade name or mark was one which Congress, legislating for a different purpose, had chosen to prohibit absolutely except as to certain users thereof. This, nevertheless, is the anomalous result of the decision of the court below.

The court seemed to attribute some significance to the failure of Congress to enact certain bills to amend Section 4 of the Red Cross statute so as to eliminate, or eliminate within given periods, the exemption from its prohibitions of pre-1905

[4] *Federal Trade Commission* v. *Algoma Lumber Co.*, 291 U. S. 67, 79–80, 81–82; *El Moro Cigar Co.* v. *Federal Trade Commission*, 107 F. 2d 429, 431 (C. C. A. 4). The trade name in each of these cases had been used for more than 30 years.

users.[5] But the proposals to subject pre-1905 users to an absolute prohibition had, in addition to a different purpose (*supra*, pp. 8–9), a different scope than the prohibitions, based on the Commerce Clause, incorporated in the Federal Trade Commission Act. Whether use of the words "Red Cross" or its emblem in connection with a product violates the Federal Trade Commission Act will depend upon whether or not the use in the particular case has a tendency to deceive the public. Under these circumstances, the failure to enact the bills to amend Section 4 of the Red Cross statute has little significance. Cf. *Helvering* v. *Clifford*, 309 U. S. 331, 337–338; *Corn Products Refining Co.* v. *Federal Trade Commission*, No. 680, Oct. Term 1944, slip opinion pp. 7–8.

The meaning of the Federal Trade Commission Act, read in conjunction with the American National Red Cross Act, as applied to pre-1905 users of the Red Cross emblem and of the words "Red Cross" presents an important question of federal law which has not been but should be settled by this Court. The decision by this Court, if it grants certiorari, will govern the application of the Trade Commission Act to all such pre-1905 users of whom there are, according

[5] H. R. 14330, 65th Cong., 3d sess. (printed in hearings before House Committee on Foreign Affairs on H. R. 6911, 77th Cong., 2d sess., 371); H. R. 7420, 77th Cong., 2d sess.; S. 469, 78th Cong., 2d sess.

to the uncontradicted testimony, "literally hundreds" (R. 311). The question presented is important because it involves not only the interests of the general public which the Trade Commission Act is designed to promote but also the interests of an organization having so many of the characteristics of a public institution as the American National Red Cross, the good will and public esteem of which suffer, it must be assumed, when its emblem and name are commercially exploited.[6]

The importance of the question of federal law presented is not measurably affected by the fact that the decision below circumscribes the relief which the Commission may grant rather than denies to the Commission all power of relief. As long as respondent may continue to use its present name and trade-mark, the deception of those presently misled—the careless, ignorant, illiterate or foreign-born—cannot be materially curbed by an accompanying corrective statement such as the

[6] The prohibitions of Section 4 of the Red Cross statute amount to a declaration to this effect by Congress.

The same declaration has been made, in effect, by international treaty. See Chap. VIII, Art. 28, of the Red Cross convention of 1929, to which the United States became a party in 1932, quoted in H. Rep. 2054, 78th Cong., 2d sess., 5–6.

The American National Red Cross has advised the Government that it believes that the issue raised by the decision in this case is "one of importance to our Organization as well as a matter of substantial public interest."

court below permits the Commission to require. Furthermore, if, as we contend, the order entered in this case was within the limits of the Commission's statutory authority, it is for the Commission to determine what relief is appropriate or necessary, subject to correction by the courts only if its determination amounts to an abuse of discretion. *Federal Trade Commission* v. *Algoma Lumber Co.*, 291 U. S. 67, 81–82; *Herzfeld* v. *Federal Trade Commission*, 140 F. 2d 207, 208–209 (C. C. A. 2); *Parke, Austin & Lipscomb, Inc.* v. *Federal Trade Commission*, 142 F. 2d 437, 441–442 (C. C. A. 2), certiorari denied, 323 U. S. 753.

CONCLUSION

It is respectfully submitted that the petition for a writ of certiorari should be granted.

HAROLD JUDSON,
Acting Solicitor General.

AUGUST 1945.

INDEX

	Page
Opinions below	1
Jurisdiction	1
Questions presented	2
Statutes involved	2
Statement	5
Specification of errors to be urged	11
Summary of argument	12
Argument:	
I. The unfair or deceptive acts or practices prohibited by the Federal Trade Commission Act include deceptive use of the Red Cross name and emblem, and no exemption of those who had used this name and emblem prior to 1905 is to be inferred by reason of the exemption of such users from the prohibitions of the Red Cross Act	13
II. The Commission's order requiring respondent to cease using the Red Cross name and emblem to designate its products was a proper exercise of the discretion vested in the Commission to determine the relief necessary to prevent further violation of the statute	30
Conclusion	33

CITATIONS

Cases:	
Arónberg v. *Federal Trade Commission*, 132 F. 2d 165	33
Bacardi Corporation of America v. *Domenech*, 311 U. S. 150	29
California Rice Industry v. *Federal Trade Commission*, 102 F. 2d 716	28
Charles of the Ritz Distributors Corp. v. *Federal Trade Commission*, 143 F. 2d 676	17, 32
Cook v. *United States*, 288 U. S. 102	29
Corn Products Co. v. *Federal Trade Commission*, 324 U. S. 726	27
Cornell Steamboat Co. v. *United States*, 321 U. S. 634	26
Dietzgen, Eugene, Co. v. *Federal Trade Commission*, 142 F. 2d 321, certiorari denied, 323 U. S. 730	28
El Moro Cigar Co. v. *Federal Trade Commission*, 107 F. 2d 429	17, 32
Fashion Originators' Guild, Inc. v. *Federal Trade Commission*, 312 U. S. 457	28
Federal Trade Commission v. *Algoma Lumber Co.*, 291 U. S. 67	14, 16, 17, 30

Cases—Continued.

	Page
Federal Trade Commission v. *Army & Navy Trading Co.*, 88 F. 2d 776	32
Federal Trade Commission v. *Good-Grape Co.*, 45 F. 2d 70	27
Federal Trade Commission v. *Keppel & Bro., Inc.*, 291 U. S. 304	15, 16
Federal Trade Commission v. *Morrissey*, 47 F. 2d 101	27
Federal Trade Commission v. *Raladam Co.*, 316 U. S. 149	18
Federal Trade Commission v. *Royal Milling Co.*, 288 U. S. 212	16, 31
Federal Trade Commission v. *Standard Education Society*, 302 U. S. 112	17, 33
Federal Trade Commission v. *Winsted Hosiery Co.*, 258 U. S. 483	16
Fresh Grown Preserve Corp. v. *Federal Trade Commission*, 125 F. 2d 917	28
Haynes, Justin, & Co. v. *Federal Trade Commission*, 105 F. 2d 988, certiorari denied, 308 U. S. 616	27
Helvering v. *Clifford*, 309 U. S. 331	27
Heusher, H. N., & Son v. *Federal Trade Commission*, 106 F. 2d 596	32
Houbigant, Inc. v. *Federal Trade Commission*, 139 F. 2d 1019, certiorari denied, 323 U. S. 763	28
Louisville & Nashville R. R. v. *Mottley*, 219 U. S. 467	17
New York v. *United States*, 257 U. S. 591	18
Parke, Austin & Lipscomb, Inc. v. *Federal Trade Commission*, 142 F. 2d 437, certiorari denied, 323 U. S. 753	32
Pep Boys v. *Federal Trade Commission*, 122 F. 2d 158	18
Perloff v. *Federal Trade Commission*, 150 F. 2d 757	32
Royal Baking Powder Co. v. *Federal Trade Commission*, 281 Fed. 744	27
Siegel, Jacob, Co. v. *Federal Trade Commission*, 150 F. 2d 751, petition for certiorari pending (No. 605 this Term)	32
Stanley Laboratories, Inc. v. *Federal Trade Commission*, 138 F. 2d 388	15

Statutes:

Act of June 23, 1910, 36 Stat. 604, 36 U. S. C. 4	4, 12
American National Red Cross Act of January 5, 1905:	
Preamble, 35 Stat. 599, Historical Note to 36 U. S. C. A. 1	21
Sec. 4, 33 Stat. 600, 36 U. S. C. A. 4 (and Historical Note)	3
Federal Food, Drug and Cosmetic Act of 1938, 52 Stat. 1040	27, 28
Federal Trade Commission Act of September 26, 1914, Sec. 5, 38 Stat. 719, as amended by the Act of March 21, 1938, 52 Stat. 111, 15 U. S. C. 45	3, 27, 34
Food and Drug Act of June 30, 1936, 34 Stat. 768	27

Congressional material:	Page
39 Cong. Rec. 254	21
39 Cong. Rec. 404, 405	22
39 Cong. Rec. 465	21
45 Cong. Rec. 7456–7457	22
45 Cong. Rec. 8554	22
83 Cong. Rec. 391	26
90 Cong. Rec. 398	24
H. R. 7429, 77th Cong., 2d Sess.	25, 26
Hearings before House Foreign Affairs Committee on S. 469, 78th Cong., 2d Sess., pp. 226, 231	25
Hearings before Senate Judiciary Committee on S. 2441 and H. R. 7420, 77th Cong., 2d Sess., p. 105	26
House Reports:	
1256, 61st Cong., 2d Sess., p. 2, 3	21, 22
1613, 75th Cong., 1st Sess., p. 3	18
2054, 78th Cong., 2d Sess.	24
2387, 77th Cong., 2d Sess.	24
3146, 58th Cong., 3d Sess., p. 2	21
S. 469, 78th Cong., 2d Sess.	25
Senate Reports:	
221, 75th Cong., 1st Sess., p. 2	18
597, 63d Cong., 2d Sess.	26
722, 61st Cong., 2d Sess.	22
Miscellaneous:	
Red Cross Convention of 1929, Art. 28, 47 Stat. 2074	13, 28

In the Supreme Court of the United States

OCTOBER TERM, 1945

No. 320

FEDERAL TRADE COMMISSION, PETITIONER

v.

A. P. W. PAPER COMPANY, INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE FEDERAL TRADE COMMISSION

OPINIONS BELOW

The findings, conclusions, and order of the Federal Trade Commission (R. 38–52) are not yet reported. The opinion of the Circuit Court of Appeals (R. 458–463) is reported in 149 F. 2d 424.

JURISDICTION

The decree of the Circuit Court of Appeals was entered on June 5, 1945 (R. 464). The petition for a writ of certiorari was filed on August 13, 1945, and was granted on October 8, 1945 (R. 466). The jurisdiction of this Court rests on Section 5 of the Federal Trade Commission Act as amended,

52 Stat. 111, 15 U. S. C. 45, and Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

Whether Section 4 of the Act of June 5, 1905, as amended in 1910, which gave exclusive rights to the use of the words "Red Cross" or the sign of the Greek red cross to the American National Red Cross and the Army and Navy sanitary and hospital authorities of the United States but exempted from the general prohibitions of the Act those who had lawfully used said words and emblem prior to January 1905, also exempts such prior users from the prohibitions of the Federal Trade Commission Act, as amended, even though a prior user is now found to be employing these words and symbol as an unfair and deceptive act or practice in interstate commerce.

A further question which may be presented by respondents in purported support of the judgment below is whether the Commission's order requiring respondent to cease using the Red Cross name and emblem was an abuse of the Commission's discretionary authority to determine the necessary remedy.

STATUTES INVOLVED

Section 5 of the Federal Trade Commission Act of September 26, 1914, 38 Stat. 719, as

amended by the Act of March 21, 1938, 52 Stat. 111, 15 U. S. C. 45, provides in part:

> (a) Unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce, are hereby declared unlawful.
>
> The Commission is hereby empowered and directed to prevent persons, partnerships, or corporations * * * from using unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce.
>
> (b) * * * If upon such hearing [on the Commission's complaint] the Commission shall be of the opinion that the method of competition or the act or practice in question is prohibited by this Act, it shall make a report in writing in which it shall state its findings as to the facts and shall issue and cause to be served on such person, partnership, or corporation an order requiring such person, partnership, or corporation to cease and desist from using such method of competition or such act or practice. * * *

Section 4 of the American National Red Cross Act of January 5, 1905, 33 Stat. 600, 36 U. S. C. A. 4 (and Historical Note), provided as follows:

> That from and after the passage of this Act it shall be unlawful for any person within the jurisdiction of the United States to falsely and fraudulently hold himself

> out as, or represent or pretend himself to be, a member of, or an agent for, the American National Red Cross, for the purpose of soliciting, collecting, or receiving money or material; or for any person to wear or display the sign of the Red Cross, or any insignia colored in imitation thereof for the fraudulent purpose of inducing the belief that he is a member of, or an agent for, the American National Red Cross. Nor shall it be lawful for any person or corporation, other than the Red Cross of America, not now lawfully entitled to use the sign of the Red Cross, hereafter to use such sign or any insignia colored in imitation thereof for the purposes of trade or as an advertisement to induce the sale of any article whatsoever. If any person violates the provisions of this section, he shall be guilty of a misdemeanor and shall be liable to a fine of not less than one nor more than five hundred dollars, or imprisonment for a term not exceeding one year, or both, for each and every offense: The fine so collected shall be paid to the American National Red Cross.

The Act of June 23, 1910, 36 Stat. 604, 36 U. S. C. 4, amended the above section by (1) omitting the last sentence and (2) substituting the following for the second sentence:

> It shall be unlawful for any person, corporation, or association other than the American National Red Cross and its duly authorized employees and agents and the army

and navy sanitary and hospital authorities of the United States for the purpose of trade or as an advertisement to induce the sale of any article whatsoever or for any business or charitable purpose to use within the territory of the United States of America and its exterior possessions the emblem of the Greek Red Cross on a white ground, or any sign or insignia made or colored in imitation thereof, or of the words "Red Cross" or "Geneva Cross" or any combination of these words: *Provided, however*, That no person, corporation, or association that actually used or whose assignor actually used the said emblem, sign, insignia, or words for any lawful purpose prior to January fifth, nineteen hundred and five, shall be deemed forbidden by this Act to continue the use thereof for the same purpose and for the same class of goods.

STATEMENT

The Federal Trade Commission, after a hearing on a complaint which it had issued against respondent under Section 5 of the Federal Trade Commission Act, made findings of fact (R. 39–49) which the court below found to have support in the evidence (R. 459). The facts thus found may be summarized as follows:

Respondent manufactures and distributes throughout the United States various brands of toilet tissues and paper towels. Among these are brands which respondent designates as "Red

Cross Toilet Tissue" and "Red Cross Towels." Respondent began marketing the former in 1897 and the latter in 1933 and it widely advertises both of them in periodicals of national circulation. On each package or roll of such toilet tissue and towels, a Greek red cross and the words "Red Cross" are prominently displayed.[1] Respondent also features the cross and the trade name in its magazine advertisements, and it carries on its letterheads the words "Makers of Red Cross Towels and Tissue", with a red cross inserted after the words "Red Cross." (R. 39–40.)

Respondent has registered with the United States Patent Office the words "Red Cross" coupled with the Red Cross symbol as a trade-mark used by it for toilet tissue and paper towels (R. 40; Comm. Exs. 1–3, printed following R. 358).

The American Red Cross organization now has some 15,000,000 adult members and some 14,000,000 junior members, and there is an active chapter in almost every county in the United States (R. 45–46). The name "Red Cross" and the emblem of the Greek red cross on a white background have long been familiar to the American public and are associated by it with the Red Cross organization (R. 46).

[1] Samples of the rolls and packages are included in the record as original exhibits (R. 3; Comm. Exs. 7–12, R. 359–360) and have been lodged with the Clerk of this Court. The prominence given the Red Cross name and symbol in respondent's advertisement is shown by Comm. Exs. 4 and 5, printed following R. 358.

Respondent's use of the words "Red Cross" and of the Greek red cross tends to deceive a substantial portion of the purchasing public, in that the Red Cross name and symbol are understood to mean that respondent's products are sponsored, endorsed, or approved by the American National Red Cross (generally known as the Red Cross), that the Red Cross is financially interested in the sale of the products or that it uses them, that they are manufactured in accordance with sanitary standards set up by the Red Cross, or that they are in some other way connected with the Red Cross (R. 46). These mistaken beliefs are not corrected by the statement appearing on the products that they are made by respondent and that the trade name and mark are registered in the United States Patent Office (R. 47).[2] The Red Cross does not sponsor, endorse, or approve any merchandise, derive any benefit from the sale of commercial products, or set up any standards

[2] For supporting evidence, see R. 100, 156, 172, 205-206, 261, 264, 288.

[3] For supporting evidence, see R. 100, 140, 149-150, 156-157, 261, 264, 288.

[4] For supporting evidence, see R. 184, 206, 285, 288.

[5] For supporting evidence, see R. 91, 93, 103-104, 160, 277-278, 288.

[6] For supporting evidence, see R. 93, 95-97, 100, 108-109, 142-143, 176-177, 198-199, 288.

The information as to manufacture and registration of trade-mark is printed in small type and appears for the most part on the back, bottom or sides of respondent's wrappers and packages (Comm. Exs. 7-12, R. 359-360).

therefor (R. 47).[1] And the erroneous beliefs engendered by the use which respondent makes of the Red Cross name and symbol tend to cause a substantial portion of the public to purchase respondent's products (R. 49).

The Commission's findings also set forth the history and background of the American National Red Cross organization as well as the legislative provisions dealing with protection of the Red Cross name and symbol.

The organization known as the Red Cross had its origin in a treaty drafted at an international convention in Geneva, Switzerland, in 1864 (and ratified by the United States in 1882) to provide for aid to soldiers wounded in battle and for using in this connection a distinctive and uniform flag consisting of a red cross on a white background (R. 40–41, 42). Since 1881, when its predecessor was first incorporated under the laws of the District of Columbia, the American National Red Cross has used the words "Red Cross" and the Greek red cross on a white ground to identify its organization and activities (R. 43). It was incorporated by Act of Congress of June 6, 1900, 31 Stat. 277, and reincorporated by the Act of January 5, 1905, which we shall refer to as the Red Cross Act (R. 42). This Act (36 U. S. C. 1–6, 8) defines the organization's purposes and powers, establishes the manner in which the members of

[1] For supporting evidence, see R. 301–302.

its governing body shall be appointed,[3] and authorizes it to use the Red Cross emblem adopted by the Geneva convention (R. 42–43).

Section 4 of the Act (*supra*, pp. 3–4) prohibited use of the Red Cross emblem for purposes of trade by anyone not then lawfully entitled to use it and made violation of the Section a misdemeanor punishable by fine and imprisonment. These prohibitions were clarified and expanded by the Act of June 23, 1910 (*supra*, pp. 4–5). The Section as thus amended makes it unlawful for any person (other than the American Red Cross and sanitary and hospital authorities of the United States army and navy) to use the words "Red Cross" or the Red Cross emblem for any business or charitable purpose. A proviso declares that the prohibitions of the Act shall not apply to any one who had used the name or emblem for a lawful purpose prior to January 5, 1905, and who continues such use for the same purpose and the same class of goods."[4]

[3] Of the eighteen members of this body, the President appoints six, of whom he designates one as chairman and names one each from the Departments of State, War, Navy, Treasury, and Justice (R. 42).

[4] Respondent obtained registration of the Red Cross name and symbol as a trade-mark for its paper towels upon the ground that toilet tissue and paper towels are the "same class of goods" and that its use of such trade-mark for paper towels is a continuation of its pre-1905 user and therefore not prohibited by Section 4 of the Red Cross Act (R. 335, 339–340; Resp. Exs. 1-A—1-M, 2-A—2-M, R. 398–423).

The Commission concluded that the respondent's acts and practices constitute unfair and deceptive acts and practices in interstate commerce (R. 49–50). It accordingly issued an order prohibiting respondent from using the Red Cross symbol on its products and the words "Red Cross" to designate them (R. 52).

On petition to review the Commission's order, the court below held that the findings of the Commission were supported by evidence (R. 459) and that, the Red Cross Act aside, the practices found by the Commission come within the prohibitions of the Federal Trade Commission Act (R. 461). But although the Red Cross Act, by its terms, merely exempts pre-1905 users from the prohibitions of that Act, the court construed such exemption as an affirmative grant by Congress of a right of continuing use (R. 459–460). The court further held that although Congress amended the Federal Trade Commission Act in 1938 so as to prohibit, without exception, unfair or deceptive practices in interstate commerce, an implied exception to this general prohibition must be read into the later statute (R. 461). The extent of this implied exception, as ruled by the court, was that the Commission "may not absolutely forbid" use of the Red Cross name and symbol to pre-1905 users, but that it may impose other limitations on use of the name and symbol "to prevent their use in a deceptive manner" (R. 461). The Commission's order was

accordingly reversed and the case remanded to the Commission for further proceedings in conformity with the court's opinion (*ibid.*).

Judge Clark, dissenting from this holding, gave as ground therefor that the limited exception from the penal provisions of the Red Cross Act showed no "legislative intent to legalize deception of the public" (R. 462).

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred—

(1) In holding that the American Red Cross Act of January 5, 1905, as amended, confers upon those who had used the words "Red Cross" and its symbol prior to January 5, 1905, a right of continuing use which prevails against the subsequent prohibition, by the Federal Trade Commission Act as amended, of unfair or deceptive acts or practices in interstate commerce.

(2) In holding that the Federal Trade Commission Act does not empower the Federal Trade Commission, in the case of a corporation which had used the words "Red Cross" and the Red Cross symbol prior to January 5, 1905, and which currently employed such words and symbol as unfair or deceptive acts or practices in interstate commerce, to grant relief against such unfair or deceptive acts or practices by forbidding use of the words "Red Cross" and its symbol.

(3) In reversing the order of the Federal Trade Commission.

SUMMARY OF ARGUMENT

I

Respondents' practices fall squarely within the prohibitions of the Federal Trade Commission Act unless some exception from these prohibitions is to be found in the Red Cross Act of January 5, 1905. That Act, as amended in 1910, makes it a misdemeanor for any private person to use the Red Cross name or emblem unless he had been using the name or emblem lawfully prior to January 5, 1905. The Act thus confers no affirmative rights upon pre-1905 users, and the exemption given them from the criminal prohibitions of the Red Cross Act furnishes no basis for inferring that Congress intended that they should forever be free, respecting use of the name and emblem, from all regulatory legislation of general application which Congress might thereafter enact. Certainly no such inference may be drawn in the case of the Federal Trade Commission Act, which differs widely from the Red Cross Act in purposes, sanctions, and scope.

The purpose of the Federal Trade Commission Act is to prevent unfair methods of competition and deception of the consuming public by those engaged in interstate trade. The quite different objective of the Red Cross Act is to protect the interests of the American Red Cross and of the sanitary and hospital staffs of the Army and Navy, by preserving for their use, as provided by international treaty, a distinctive Red Cross.

emblem and the words "Red Cross". The subject matter and scope of the two statutes are equally far apart. The Red Cross Act applies to intrastate and interstate commerce, the Trade Commission Act solely to interstate commerce. The former statute absolutely prohibits, as to those covered, use of the Red Cross name or emblem; the latter statute applies only to use of the name or emblem when found to be an unfair method of competition or an unfair or deceptive practice.

When Congress recently had before it bills to bring pre-1905 users within the absolute prohibitions of the Red Cross Act, such legislation was urged as a measure necessary in order to carry out this country's treaty obligations and in order to free the Red Cross name and emblem from all association with commercial exploitation. The failure of Congress to enact these bills, urged upon such grounds, is no indication of legislative opinion or policy respecting the meaning and scope of the prohibitions of the Federal Trade Commission Act, and certainly no basis for implying an immunity from that Act. Furthermore, Article 28 of the Red Cross Convention, ratified by the Senate in 1932, imposes a solemn international obligation on this country to ban all commercial use of the Red Cross words and symbol, and no exemption should be read into the Trade Commission Act, in the name of supposed collateral legislative policy, for conduct which this country is under treaty obligation to terminate.

676812—45——3

II

A contention which the respondent may advance is that the deception found by the Commission would be effectively cured if respondent were required to make some qualifying statement in conjunction with the Red Cross name and emblem and that the court below therefore properly set aside the order of the Commission requiring respondent to cease using the name and emblem. But this Court has held that an order by the Commission prohibiting further use of a deceptive word in a trade name for a product should be sustained by the courts unless it appears that the Commission abused its discretion in the conclusion that no change short of excision would give adequate protection. *Federal Trade Commission* v. *Algoma Lumber Co.*, 291 U. S. 67, 81-82. The circuit courts of appeals have also consistently held that only a clear showing of abuse of discretion will justify interference by the courts with the Commission's determination of the necessary remedy. In the present case, in which findings of the Commission, supported by evidence, establish that the various limiting phrases which appeared on respondent's products did not correct the misleading impression arising from its use of the words "Red Cross" and the Red Cross sign, the Commission's order was well within its discretionary authority to determine the requisite relief.

ARGUMENT

I

THE UNFAIR OR DECEPTIVE ACTS OR PRACTICES PROHIBITED BY THE FEDERAL TRADE COMMISSION ACT INCLUDE DECEPTIVE USE OF THE RED CROSS NAME AND EMBLEM, AND NO EXEMPTION OF THOSE WHO HAD USED THIS NAME AND EMBLEM PRIOR TO 1905 IS TO BE INFERRED BY REASON OF THE EXEMPTION OF SUCH USERS FROM THE PROHIBITIONS OF THE RED CROSS ACT

The practices of the respondent, under the findings made by the Commission, fall squarely within the prohibitions of the Federal Trade Commission Act unless these prohibitions are in some way qualified or limited by reason of the prior Red Cross Act.[10] While this was assumed by the court below, consideration of the meaning and purposes of the Federal Trade Commission Act will clarify the question of the relationship, if any, between the two statutes.

As enacted in 1914, the Federal Trade Commission Act made unlawful "unfair methods of competition"[11] in interstate commerce. Practices of widely varying types may be "unfair"

[10] In *Stanley Laboratories, Inc.*, v. *Federal Trade Commission*, 138 F. 2d 388, 393 (C. C. A. 9), the court sustained an order of the Commission directed against a misleading use of the Red Cross emblem. The fact that the Red Cross Act prohibited the use made of the emblem (there being no showing of a pre-1905 use) was referred to as an additional ground for sustaining the Commission's order.

[11] Congress substituted this "broader and more flexible phrase" for the words "unfair competition" because "the meaning which the common law had given to those words was deemed too narrow." *Federal Trade Commission* v. *Keppel & Bro., Inc.*, 291 U. S. 304, 310–312.

within the meaning of the Act. If consumers prefer to purchase goods made by a particular class of manufacturers, use of a trade name which imposes upon them "an exactly similar article, or one equally as good, but having a different origin," violates the Act. *Federal Trade Commission* v. *Royal Milling Co.*, 288 U. S. 212, 216. Likewise, to sell a product under a name which to many purchasers denotes some other product is "unfair," whether or not the two products have equivalent characteristics; "the public is entitled to get what it chooses, though the choice be dictated by caprice or by fashion or perhaps by ignorance." *Federal Trade Commission* v. *Algoma Lumber Co.*, 291 U. S. 67, 77, 78. A method of competition, although involving no fraud or deception, which diverts business from competitors unless they descend to a practice which they are "under a powerful moral compulsion not to adopt" also constitutes "the kind of unfairness at which the statute is aimed." *Federal Trade Commission* v. *Keppel & Bro., Inc.*, 291 U. S. 304, 313.

It is no defense against use of a misleading name or label that it was adopted without fraudulent design or at a time when it was not in fact deceptive (*F. T. C.* v. *Algoma Lumber Co.*, at p. 79) or that dealers, as distinguished from consumers, are not deceived (*Federal Trade Commission* v. *Winsted Hosiery Co.*, 258 U. S. 483, 494). It is equally no defense that a misrepre-

sentation is "obviously false to those who are trained and experienced"; the law is for the protection of "the trusting as well as the suspicious", *Federal Trade Commission* v. *Standard Education Society*, 302 U. S. 112, 116.[12]

Registration of a trade-mark with the United States Patent Office "does not prevent its use from falling within the prohibition of the Federal Trade Commission Act." *Charles of the Ritz Distributors Corp.* v. *Federal Trade Commission*, 143 F. 2d 676, 679 (C. C. A. 2), and cases cited. Long-continued use of a misleading trade name affords no immunity from a ban against further use.[13] "There is no bar through lapse of time to a proceeding in the public interest" under the Federal Trade Commission Act (*F. T. C.* v. *Algoma Lumber Co.*, at p. 80), and it is, of course, familiar doctrine that an exercise of the commerce power which interferes with existing contract or property rights does not constitute a taking of property without due process. *Louisville & Nash-*

[12] In *Stanley Laboratories, Inc.* v. *Federal Trade Commission*, 138 F. 2d 388, 393 (C. C. A. 9), the court said:

"The law is not made for experts but to protect the public,—that vast multitude which includes the ignorant, the unthinking and the credulous, who, in making purchases, do not stop to analyze but too often are governed by appearances and general impressions."

[13] *Federal Trade Commission* v. *Algoma Lumber Co.*, 291 U. S. 67, 79, 81–82; *El Moro Cigar Co.* v. *Federal Trade Commission*, 107 F. 2d 429, 431 (C. C. A. 4). The trade name in each of these cases had been used for more than 30 years.

ville R. R. v. *Mottley*, 219 U. S. 467; *New York* v. *United States*, 257 U. S. 591, 600, 601.

Under the Federal Trade Commission Act of 1914, a showing was required not only that unfair methods had been used but also that competitors were, or were likely to be, injured by the unfair methods.[11] In 1938, however, Congress amended the Act to prohibit, in addition, "unfair or deceptive acts or practices" in interstate commerce. This change was made for the purpose of prohibiting practices which "deceive and defraud the public generally," irrespective of their effect upon competitors (S. Rep. No. 221, 75th Cong., 1st sess., p. 2) and the amendment "makes the consumer, who may be injured by an unfair trade practice, of equal concern, before the law, with the merchant or manufacturer injured by the unfair methods of a dishonest competitor" (H. Rep. No. 1613, 75th Cong., 1st sess., p. 3). In *Pep Boys* v. *Federal Trade Commission*, 122 F. 2d 158, 161 (C. C. A. 3), the court said with reference to the amended Act that "the Commission can now center its attention on the direct *protection of the consumer* where formerly it could protect him only indirectly through the protection of the competitor."

[11] A showing of injury to particular traders was not required and, where goods sold by "unfair methods" were in active competition with others, it was proper for the Commission to infer that trade was or would be diverted from those marketing such other goods. *Federal Trade Commission* v. *Raladam Co.*, 316 U. S. 149, 152.

Had petitioner used some other words or symbol deceptively, therefore, there could be no doubt of the propriety of the order here entered by the Commission. That being so, it would be a patent anomaly to allow the respondent to continue its deceptive use of the Red Cross words and symbol in the light of the clear national policy, embodied in statute and treaty,[15] to stop private use of these marks, whether deceptive or not. We submit that this anomaly is not of Congressional making and that the court below fell into error when it read the proviso in the Red Cross Act with reference to prior users as a limitation on the power of the Commission to ban deceptive practices by such users.

The Red Cross Act does not confer any affirmative rights upon persons, like respondent, who had used the Red Cross name or emblem prior to 1905. Section 4 prohibits use of the name or emblem and provides that continuation of a lawful pre-1905 use shall not be deemed "forbidden by *this Act*."[16] The rights of the pre-1905 user are thus certainly no greater than they would have been had Congress never enacted any prohibition against use of this name and emblem. We suggest that a statute—the Red Cross Act—which itself confers no general rights but only a limited immunity furnishes no basis for reading

[15] See *infra*, pp. 20–22, 28–30.

[16] Emphasis supplied.

an exception into the prohibitions of a later statute.

The decision below rests largely upon the court's conclusion that the two statutes deal with "related subject matter" (R. 461). We submit that this conclusion is erroneous; that the two statutes are not in *pari materia;* and that, different in purpose, scope, and sanctions, they, as stated in Judge Clark's dissent, "subserve quite different ends" (R. 462).

We have already pointed out that a major objective of the Federal Trade Commission Act is to prevent deception of the consuming public by means of any unfair or deceptive practice whatever. It is a statute of general application and its prohibitions are stated in broad and inclusive terms. The Act does not deal, as such, with use of the Red Cross name or emblem any more than it deals, as such, with use of the label "Merino" or use of the words "California white pine." And, to turn to the other side of the picture, the Red Cross Act does not deal with preventing deception of consumers.

The considerations which moved Congress to adopt the Red Cross Act are set forth in its preamble, which recites that the Red Cross Convention of 1864 provided for use of the Red Cross emblem by those bringing aid to the wounded in time of war; that this treaty had been ratified by more than forty nations, including the United

States; that every country requires a permanent organization to carry out the purpose of this treaty; that such an association had been formed in this country in 1881; and that "the importance of the work demands * * * a reincorporation of the society under Government supervision."[17] The report on the bill by the House Foreign Affairs Committee states that the proposed reincorporation of the American National Red Cross "will arouse and maintain public confidence and support" (H. Rep. No. 3146, 58th Cong., 3d sess., p. 2).[18]

The sole purpose of the amendment to Section 4, adopted in 1910, was to expand the prohibitions of the Section. Only use of the Red Cross emblem for purposes of trade or in advertising the sale of goods had theretofore been prohibited, and experience had shown that this gave the Red Cross organization inadequate protection (H. Rep. No. 1256, 61st Cong., 2d sess., p. 2). It was stated that "preserving the protective powers of the symbol is of the utmost importance" and that the amendment grants to the American National Red Cross "the fullest protection it is possible to afford it by congressional enactment and at the same time

[17] 33 Stat. 599, Historical Note to 36 U. S. C. A. 1.

[18] The Senate Foreign Relations Committee did not file a report on the bill and it was passed by the Senate without debate (39 Cong. Rec. 254). In the brief debate in the House, reference was made to the fact that the prohibitions of Section 4 would not apply to existing users of the Red Cross emblem (39 Cong. Rec. 405).

amply protects the concerns possessing vested property rights in the emblem" (*idem*, pp. 2, 3).

It thus appears that the purpose of Congress in prohibiting use of the Red Cross emblem was to make this a distinctive symbol for the American Red Cross and the sanitary and medical staffs of our Army and Navy, as contemplated by international treaty. So far as the fragmentary legislative history is enlightening, the exemption granted to existing users was prompted, at least in part, by constitutional doubts as to Congressional power to prohibit continuation of an existing use. H. Rep. No. 1256, 61st Cong., 2d Sess., p. 3; 39 Cong. Rec. 404, 405; 45 Cong. Rec. 8554. The constitutional power of the Federal Trade Commission to act under the Commerce Clause being clear (see *supra*, pp. 17–18), we submit that the legislative background of the exempting proviso affords no basis for inferring a Congressional purpose to free pre-1905 users of the name and emblem from any and all regulatory legislation of general application which Congress might thereafter enact, in particular for the protection of competitors or consumers.

Not only are the two statutes which we are considering altogether different in their purposes and subject matter; but they also differ widely in

[9] The Senate Foreign Relations Committee reported the bill without explanation of its provisions (S. Rep. No. 724, 61st Cong., 2d Sess.) and the bill passed the Senate without debate (45 Cong. Rec. 7456–7457).

their application to use of the Red Cross name and emblem. The Red Cross Act applies to use in intrastate and interstate commerce; the Federal Trade Commission Act solely to use in interstate commerce. The penal provisions of the Red Cross Act, as to those covered, are absolute; the Trade Commission Act makes use of the name or emblem unlawful and subject to a cease and desist order only when it is employed as an unfair method of competition or as an unfair or deceptive act or practice. Thus, each case under the Federal Trade Commission Act must stand on the evidence peculiar to it, and it cannot be said that the Act's prohibitions, as to sellers of goods carrying the Red Cross name or emblem, cover all those pre-1905 users exempted from the prohibitions of the Red Cross Act. Misconceptions such as arise from respondent's use of the name and emblem are much more likely when, as in the present case, the words "Red Cross" and the emblem are used in conjunction and are used to designate an article connected with sanitation.[2]

The court below attached significance to the failure of Congress to enact certain proposed bills to amend the Red Cross Act so as to bring pre-

[2] These words and emblem have been registered as trade-marks, based upon pre-1905 use, for many diverse articles (Resp. Ex. 13, R. 448–457). A single page of this exhibit shows that the sign of the Greek cross or the words "Red Cross" have been thus registered as trade-marks for "hydraulic or fire hose," "elastic goring," "macaroni," "swings," "wheeled vehicles," "wind mills," and "spoons" (R. 454).

1905 users within its prohibitions (R. 460),[21] and the respondent has urged that the proceedings on these bills indicate that Congress regards the question of terminating the "rights" of such users as "solely within its own competence" (Br. in Opp. 5–6). But in view of the very different objectives and scope of the two statutes, we submit that there is no warrant for inferring, either from Congressional inaction on proposed modification of the Red Cross Act or from the statement by the House Committee (H. Rep. No. 2054, 78th Cong., 2d sess., p. 4), referred to by the court below (R. 460), to the effect "that under existing law there are legal uses of the symbol by commercial users," that Congress deems the Federal Trade Commission Act inapplicable to those in respondent's position.

Consideration of the reasons advanced for amending the Red Cross Act fortifies this conclusion. Amendment was urged as being necessary or desirable in order (1) to implement the

[21] In the 77th Congress, a bill to eliminate, over a period of time, the exemption given to pre-1905 users was favorably reported by the House Foreign Affairs Committee (H. Rep. No. 2387, 77th Cong., 2d Sess.) but Congress adjourned before the House had taken action. In the 78th Congress, the Senate passed a bill with similar provisions (90 Cong. Rec. 398, 401, 3656); the House Foreign Affairs Committee favorably reported this bill with limiting amendments (H. Rep. 2054, 78th Cong., 2d Sess.) but Congress adjourned before the bill was reached on the calendar. No bill of this nature, designed to implement the treaty, is pending before the present Congress.

Red Cross Convention of 1929 which this country had ratified and (2) to free the Red Cross name and emblem from association with commercial exploitation. Enactment of the amendatory legislation was urged by the President, upon the ground that "it seems almost a sacrilege for any person for private, material benefit to use an emblem created by international agreement solely for humane purposes"; by the Secretary of State, upon the ground that such action was called for by our obligations under the Red Cross treaty of 1929;[22] by the Secretary of War, upon the ground that indoctrinating members of the armed forces with the significance of the Red Cross insignia "is rendered more difficult by widespread and continuous display of the emblem in our own country for commercial purposes"; by the Secretary of the Navy, upon substantially the same grounds; and by the Attorney General, upon the ground that the Red Cross name and emblem are identifying symbols of a world-wide service and that every competing use thereof should therefore be excluded (Hearings before House Foreign Affairs Committee on S. 469, 78th Cong., 2d Sess., pp. 226–231).

It is not without significance that the proposed legislation, amendatory of the Red Cross Act, fell

[22] S. 469, 78th Cong., 2d Sess., and H. R. 7420, 77th Cong., 2d Sess., each bore the title: "An Act to implement article 28 of the Convention signed at Geneva on July 27, 1929, relating to the use of the emblem and name of the Red Cross."

within the jurisdiction of the House Foreign Affairs Committee and the Senate Judiciary Committee, neither of which can be presumed to have expressed an authoritative interpretation of the Federal Trade Commission Act and its amendment, which were reported by the Committees on Interstate Commerce. Cf. *Cornell Steamboat Co. v. United States*, 321 U. S. 634, 648 (dissenting opinion).

Moreover, when considering the bills to amend the Red Cross Act, Congress had before it a memorandum submitted by the company which perhaps most actively opposed the legislation; in this memorandum, the view that the existing Red Cross Act interposed no bar to proceedings under the Federal Trade Commission Act against a pre-1905 user of the Red Cross name or emblem was set forth. It was stated that:[23]

> The elimination of abuses is within the jurisdiction of the Federal Trade Commission. No complaint was ever issued by it until shortly after the introduction of H. R. 6911[24] and S. 2441. A second complaint has now been issued. There is little doubt that the Federal Trade Commission will be successful in eliminating any abuses that

[23] S. Rep. No. 597, 63d Cong., 2d Sess.; 83 Cong. Rec. 39[illegible].

[24] Hearings before a subcommittee of the Senate Judiciary Committee on S. 2441 and H. R. 7420, 77th Cong., 2d Sess., p. 105.

[25] H. R. 7420 was later substituted for H. R. 6911.

may be found in these two proceedings and any others that it may bring.

The proposed legislation would have made use of the Red Cross name and symbol by all pre-1905 users a misdemeanor. We think it clear that the failure of Congress to pass these bills, like its rejection of a ban on all basing-point systems, means only that Congress left the legality of uses of the Red Cross marks "to be determined accordingly as they might be within the reach of" the Federal Trade Commission Act "and its more restricted prohibitions." Cf. *Corn Products Co.* v. *Federal Trade Commission*, 324 U. S. 726, 737. See also *Helvering* v. *Clifford*, 309 U. S. 331, 337-338.

The courts have uniformly rejected the contention that conduct which is made unlawful by some other federal statute is impliedly excluded from the prohibitions of Section 5 of the Federal Trade Commission Act. It has been repeatedly held that Section 5 applies to a misleading labeling which constitutes a misbranding prohibited by the Food and Drug Act of June 30, 1906 (34 Stat. 768)[28] or by the Federal Food, Drug, and

[28] *Royal Baking Powder Co.* v. *Federal Trade Commission*, 281 Fed. 744 (C. C. A. 2); *Federal Trade Commission* v. *Good-Grape Co.*, 45 F. 2d 70 (C. C. A. 6); *Federal Trade Commission* v. *Morrissey*, 47 F. 2d 101 (C. C. A. 7); *Justin Haynes & Co.* v. *Federal Trade Commission*, 105 F. 2d 988, 989 (C. C. A. 2), certiorari which raised this question denied, 308 U. S. 616.

Cosmetic Act of 1938 (52 Stat. 1040).[27] Likewise this Court and other courts have held that practices constituting a violation of the Sherman Act may be proceeded against as an unfair method of competition under the Trade Commission Act.[28] If then, as has been consistently held, a statute which affirmatively bans conduct is not deemed to pre-empt all further legislative concern with that conduct, a statute like the Red Cross Act, which merely exempts some persons from its coverage, should not be held to foreclose the subsequent application of a later statute, the Federal Trade Commission Act.

Finally, we suggest that in determining whether some limitation upon the prohibitions of the Federal Trade Commission Act should be inferred as to persons exempted from the prohibitions of the Red Cross Act, Article 28 of the Red Cross treaty or convention ratified by the United States in 1932 (47 Stat. 2074) is highly relevant. Article 28 provides that (47 Stat. 2092):

> The Governments of the High Contracting Parties whose legislation may not now

---

[27] *Fresh Grown Preserve Corp.* v. *Federal Trade Commission*, 125 F. 2d 917, 919 (C. C. A. 2); *Houbigant, Inc.* v. *Federal Trade Commission*, 139 F. 2d 1019, 1020 (C. C. A. 2), certiorari which raised this question denied, 323 U. S. 763.

[28] *Fashion Originators' Guild Inc.* v. *Federal Trade Commission*, 312 U. S. 457, 468; *California Rice Industry* v. *Federal Trade Commission*, 102 F. 2d 716, 720–722 (C. C. A. 9); *Eugene Dietzgen Co.* v. *Federal Trade Commission*, 142 F. 2d 321, 326–327, certiorari which raised this question denied, 323 U. S. 730.

> be adequate shall take or shall recommend to their legislatures such measures as may be necessary at all times:
>
> (a) to prevent the use by private persons or by societies other than those upon which this Convention confers the right thereto, of the emblem or of the name of the *Red Cross* or *Geneva Cross*, as well as any other sign or designation constituting an imitation thereof, whether for commercial or other purposes;
>
> * * * * *
>
> The prohibition mentioned in subparagraph (a) of the use of signs or designations constituting an imitation of the emblem or designation of the *Red Cross* or *Geneva Cross*, * * * shall take effect from the time set in each act of legislation and at the latest five years after this Convention goes into effect. After such going into effect it shall be unlawful to take out a trademark or commercial label contrary to such prohibitions.

Under this provision, respondent's use of the Red Cross name and emblem is one which the United States has explicitly agreed to prohibit, and we submit that no exemption from the Federal Trade Commission Act can be implied on the basis of supposed legislative policy in favor of conduct which this country is under solemn international obligation to terminate. Cf. *Bacardi Corporation* v. *Domenech*; 311 U. S. 150, 161–165; *Cook* v. *United States*, 288 U. S. 102, 119–120. We believe that the proviso in Section 4 of the Red

Cross Act evinces no national policy of relevance in the interpretation of the Federal Trade Commission Act, and that, in any event, whatever policy might be drawn from the proviso is counterbalanced by the considerations implicit in the 1929 Convention.

II

THE COMMISSION'S ORDER REQUIRING RESPONDENT TO CEASE USING THE RED CROSS NAME AND EMBLEM TO DESIGNATE ITS PRODUCTS WAS A PROPER EXERCISE OF THE DISCRETION VESTED IN THE COMMISSION TO DETERMINE THE RELIEF NECESSARY TO PREVENT FURTHER VIOLATION OF THE STATUTE

Respondents may contend that even if the court below erred in holding that the Federal Trade Commission Act, read in the light of the Red Cross legislation, did not empower the Commission to prohibit respondents' use of the Red Cross name and emblem, a less drastic remedy than discontinuance of respondent's use of this name and emblem would give adequate relief and that, for this reason, the judgment of the court below should be affirmed. The Government submits, in answer to such a contention, that the Commission's ruling as to the remedy clearly did not exceed the permissible limits of its discretionary authority.

In *Federal Trade Commission* v. *Algoma Lumber Co.*, 291 U. S. 67, the Commission found that use of the words "California white pine" to describe products of the *Pinus ponderosa* was deceptive and an unfair method of competition and entered an order prohibiting use of the word

"white" to describe such products. This Court, in sustaining the order, said (pp. 81–82) that "the Commission did not abuse its discretion in reaching the conclusion that no change of the name short of the excision of the word 'white' would give adequate protection." This decision may well be contrasted with the earlier decision of this Court in *Federal Trade Commission* v. *Royal Milling Co.*, 288 U. S. 212, in which the Commission's order, prohibiting the use of the words "mill" or "milling company" in the respondents' corporate and trade names, was modified to require, not an outright ban on the use of the words, but merely qualification and explanation. This course was adopted in the *Royal Milling* case because it was thought that qualifying words would be sufficient, under the circumstances, to cure the deception, the Court having noted (288 U. S. at 214) that the respondents "mix and blend different kinds of flour purchased from others."

In subsequent cases involving a misleading word or words in a trade name or trade-mark, orders of the Commission requiring discontinuance of the misleading word or words have been upheld by various circuit courts of appeals, as against the contention that an accompanying explanatory statement would adequately cure the deception, and that the Commission's order should therefore be modified. The courts have pointed out that when the misleading word is absolutely false in

its connotation, "it cannot be qualified; it can only be contradicted."[28] More recently the courts, taking note of decisions of this Court emphasizing that administrative tribunals are vested with a wide range of discretion in determining the requisite relief in matters committed to them for decision, have said that only a clear showing of abuse of discretion would justify interference by the courts with the Commission's ruling respecting relief.

The products of the present respondent have carried the name of the company and such words as "Trade Mark Reg. U. S. Pat. Off." and "Trade Mark Red Cross & Label Design Registered U. S. Patent Office by A. P. W. Paper Company, Inc., Manufacturer".[29] Since the Commission found, upon adequate evidence, that these words have not served to correct the misleading impression arising

---

[28] *Federal Trade Commission* v. *Army & Navy Trading Co.*, 88 F. 2d 776, 779–780 (App. D. C.); *H. N. Housner & Son* v. *Federal Trade Commission*, 106 F. 2d 596, 597 (C. C. A. 3); *El Moro Cigar Co.* v. *Federal Trade Commission*, 107 F. 2d 429, 431 (C. C. A. 1).

[29] *Parke, Austin & Lipscomb, Inc.* v. *Federal Trade Commission*, 142 F. 2d 437, 442 (C. C. A. 2), certiorari which raised this question denied, 323 U. S. 753; *Charles of the Ritz Distributors Corp.* v. *Federal Trade Commission*, 143 F. 2d 676, 680 (C. C. A. 2); *Jacob Siegel Co.* v. *Federal Trade Commission*, 150 F. 2d 751, 756 (C. C. A. 3), petition for certiorari pending (No. 605, this Term); *Perloff* v. *Federal Trade Commission*, 150 F. 2d 757, 760 (C. C. A. 3).

[30] Comm. Exs. 7–12 (Original Exhibits), R. 359–360.

out of respondent's use of the words "Red Cross" and the Red Cross sign (*supra*, p. 7), it was certainly reasonable for the Commission to conclude that the deception of purchasers arising from such use could be effectively cured only by prohibiting use of the words and emblem. See also in this connection samples of respondent's advertisements (Comm. Exs. 4–5, printed following R. 358).

In determining what practices the law forbids, the test is what may mislead, not those who are trained and experienced, but the careless, credulous or ignorant. *Federal Trade Commission* v. *Standard Education Society*, 302 U. S. 112, 116. Clearly the same test must be applied in determining appropriate relief. In this connection, one court has observed that:

> If the Commission, having discretion to deal with these matters, thinks it best to insist upon a form of advertising clear enough so that, in the words of the prophet Isaiah, "wayfaring men, though fools, shall not err therein," it is not for the courts to revise its judgment.[32]

CONCLUSION

For the reasons stated, it is respectfully submitted that the judgment of the Circuit Court of

[32] *Aronberg* v. *Federal Trade Commission*, 132 F. 2d 165, 167 (C. C. A. 7).

Appeals should be reversed, with directions to affirm and enforce the Commission's order.

J. HOWARD MCGRATH,
Solicitor General.

WENDELL BERGE,
Assistant Attorney General.

CHARLES H. WESTON,
Special Assistant to the Attorney General.

W. T. KELLEY,
Chief Counsel, Federal Trade Commission.

DECEMBER 1945.

Section 5 (c) of the Federal Trade Commission, 15 U. S. C. 45 (c), provides: "To the extent that the order of the Commission is affirmed, the court shall thereupon issue its own order commanding obedience to the terms of such order of the Commission."

U. S. GOVERNMENT PRINTING OFFICE, 945

FILE COPY

SEP. 5

IN THE

Supreme Court of the United States

OCTOBER TERM, 1945

No. 320

FEDERAL TRADE COMMISSION,

Petitioner,

v.

A. P. W. PAPER COMPANY, INC.,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

EDWARD H. GREEN

EMERY H. SYKES

Attorneys for A. P. W. Paper Company, Inc.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1945

No. 320

FEDERAL TRADE COMMISSION,
Petitioner,

v.

A. P. W. PAPER COMPANY, INC.,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

The "question presented" as stated in the petition does not accurately set forth the question actually presented. The petitioner says that the question is whether the Act of January 5, 1905, as amended in 1910, excepts pre-1905 users of the Red Cross words and symbol from the prohibitions of the Federal Trade Commission Act, as amended. The Court below held that the two statutes should, if possible, be so construed as to give effect to both, and then held:

> "Both principles may be recognized in the case at bar by holding that the Red Cross Act gives the petitioner the right to continue to use the Red Cross words and symbol but the Federal Trade Commis-

sion Act empowers the respondent to prevent their use in a deceptive manner."

It thereupon remanded the cause to the Commission for further proceedings in accordance with its opinion. There have been no further proceedings. The Commission has never decided whether or not it could enter an order which would permit the respondent to continue to use the words and symbol and at the same time prevent their use in a manner that would violate the Federal Trade Commission Act.

STATEMENT

The respondent's use of the trade name "Red Cross" goes back to 1897. The Commission did not find, nor is there a scintilla of evidence in the case, that the respondent by any word or act tried to lead people to believe that there was any connection with the American Red Cross Society. The case is one of mere naked user, and there is no question as to the power of the Commission to stop the respondent from doing anything beyond the mere use of the trade-mark.

The petition passes over lightly the significant current legislative history.

When Congress passed the Red Cross Act in 1905 and amended it in 1910, it recognized that the equities of existing users were sufficient to call for protection, and accordingly they were exempted from the prohibitions of Section 4. This exemption is now set forth in 36 USCA, Par. 4, as follows:

> "No person, corporation, or association that actually used or whose assignor actually used the said emblem, sign, insignia, or words for any lawful purpose prior to January 5, 1905, shall be deemed for-

bidden to continue the use thereof for the same purpose and for the same class of goods."

In 1919 a bill was introduced to eliminate the proviso, but after hearings Congress left the law unchanged. (Record fol. 1055)

In 1942 the issue of repealing the exemption was brought before Congress and the House Committee on Foreign Affairs held extensive hearings and took voluminous testimony. The Committee finally reported a bill to the House (H. R. 7420). This bill provided that the pre-1905 users "may continue to use" the Red Cross name and symbol to a specified date, with tapering-off provisions thereafter. The accompanying report* stated:

> "The provisions of the present law which permit certain persons to continue to use the Red Cross emblem and words and the White Cross emblem, without limitation as to time, are eliminated by Sections 1 and 2 of the bill."

This bill died, as the life of the House expired before it was taken up. The following year the Senate took up the same bill and referred it to its Committee on Judiciary, which held extensive hearings. It then reported the bill out to the Senate, accepting the principles of the House bill but making some changes in the language and the date when the prohibition should come into effect. This bill was passed by the Senate (S. 469). The Committee report** accompanying the bill to the Senate stated:

> "In January 1905, after the American National Red Cross had been reincorporated by an act of

*House Report No. 2387, 77th Congress, 2d Session, page 5.
**Senate Report No. 542, 78th Congress, 1st Session, page 2.

Congress, commercial exploitation of the Red Cross emblem was prohibited by Federal statute, but this law operated only as to persons and corporations which at that time were not 'lawfully entitled to use the sign of the Red Cross'.

* * *

"It was the opinion of the committee, after long hearings and much consideration, that legislation should be enacted to implement the treaty and to provide eventually that the use of the symbol and the words should be limited rigidly to the American Red Cross Society.

"It was recognized, however, that there have been good faith uses of the symbol. The bill as reported to the Senate, therefore, gives an opportunity for commercial users gradually to abandon the use by providing: First, that those who were lawfully entitled to the use of the Red Cross prior to the act of January 5, 1905, for commercial purposes might continue such use until July 1, 1947; * * *"

The bill then went to the House, where the Committee reported the bill favorably, with minor amendments. This Committee report,* dated December 11, 1944, in explaining the existing law and the reason for the proposed change, stated:

"Persons, corporations or associations that actually used or whose assignors actually used the Red Cross insignia or words for any lawful purpose prior to January 5, 1905, however, are expressly permitted to continue the use thereof for the same purpose and for the same class of goods.

"With the steady growth of the American Red Cross Society both as to membership and activities

*House Report No. 2054, 78th Congress, 2d Session, page 4.

> the significance of the symbol as the sign of international work for the relief of the wounded and the suffering became constantly better and better known.
> * * *
>
> "It was recognized, however, that under existing law there are legal uses of the symbol by commercial users. The Bill as reported, therefore, gives an opportunity for commercial users gradually to abandon the use of the symbol and name by providing: * * * "

Congress adjourned before the bill was reached on the calendar.

REASONS FOR DENYING THE WRIT

1.

The question presented in this litigation is peculiarly one within the jurisdiction of Congress, where it is receiving full consideration. This current legislative history emphasizes that Congress has retained jurisdiction over dealing with the use of the Red Cross; that Congress regards the pre-1905 users as having the right still to do so; and that Congress is actively engaged in considering the respective equities to determine under what conditions and under what relief provisions it should terminate the right of pre-1905 users to continue the use of the Red Cross.

Neither the Federal Trade Commission nor anyone else at any time during the elaborate Congressional hearings ever suggested the construction of the Federal Trade Commission Act urged for the first time upon the Court below. Certainly Congress at no time has regarded itself as having given to anyone the power to terminate the rights of the pre-1905 users but is treating the matter as one solely with-

in its own competence and is giving it the appropriate consideration.

It may be noted that the bill passed by the Senate in 1944 and the two bills approved by the House Committee in 1942 and 1944 all refused to do that which the Commission seeks in this proceeding, viz. to terminate the right forthwith. They all continued the use unchanged for a number of years and then provided for a tapering-off period. In its further consideration of the problem the Congress will have before it the decision of the Court below in this case.

2.

The question presented is of very limited application.

The Chairman of the House Committee, which had had extended hearings in 1942 and again in 1944 on the bill to eliminate the exemption, stated at the hearing on May 23, 1944:

> "The Chairman would like to state I think there are only six, not more than six, that were legally entitled to use it before that date."

This was given in reply to a question raised as to how many pre-1905 users of the Red Cross label there now are. (See "Hearings before the Committee on Foreign Affairs, House of Representatives, on S.469", p. 60.)

Petitioner's suggestion (Brief, p. 13) that there are "literally hundreds" of users is not correct. The testimony to which he refers (Rec., p. 311) does not bear him out. This is clear from a reading of the cited testimony, and beyond dispute when the context is examined.

The witness was asked on direct examination (Rec., p. 307):

"Q. I will ask you, Mr. Hughes, whether in connection with your official duties with the Red Cross, you ever had occasion to investigate the extent of the commercial use of the Red Cross' name and emblem, or to deal with matters like that. A. During the past 20 years I have handled myself approximately 3,500 separate matters affecting the use and misuse of the Red Cross name and emblem, and since January 1, 1939, I have handled approximately 350 separate cases involving the use or misuse of the Red Cross name and emblem."

On cross-examination the witness testified at p. 311 as follows:

"Q. How many of these commercial companies do you find that use the trade-mark in interstate commerce? A. I have never been able to make a determination in the field of interstate commerce, but there are literally hundreds of companies that have or are making use of the Red Cross name or emblem for commercial purposes.

"Q. And have made use of that since 1905? A. Yes, since 1905.

"Q. You have recognized as a lawyer all the time that those who used the mark prior to 1905, under the very terms of the statute, were given the right to continue the use for the same class as they had previously used it? A. For the same purposes and for the same class of goods.

"Q. 'For the same purposes' meant for legal purposes; did it not?"

Obviously the witness was not talking about pre-1905 users. He was testifying about those that did not come within the exemption of the statute—those who had started their use since 1905, which were largely small, local, intrastate users.

The question presented now to this Court on the interplay of the exemption in the Red Cross Act and the Federal Trade Commission Act does not affect any post-1905 users because they do not come within the exemption, nor does it affect any intrastate users for they do not come within the Federal Trade Commission Act. The witness did not even purport to testify as to the number of the present pre-1905 users.

Those who at some time used the Red Cross for commercial purposes may have been "literally hundreds", particularly if there be included the small intrastate users. But the issue here presented affects only those who come within the exemption, namely the present users whose use extends back prior to 1905. It was, of course, pertinent for the House Committee to inquire how many concerns were still lawfully using the Red Cross and would be affected by the repeal of the exemption. Thus the Chairman of the Committee was prepared to give the answer above quoted, namely that there are six.

3.

This application for certiorari is premature. The Circuit Court of Appeals remanded the case to the Federal Trade Commission for further action in accordance with its opinion, but the Commission has not taken any further action. The only reason assigned for presenting the question to this Court in this state of the proceedings is a statement by the Solicitor General that the Commission cannot prevent deception without absolutely preventing the use. This, however, is not a finding by the Commission but merely a statement of counsel.

The Commission has not yet even considered the question of whether it can secure compliance with the Federal Trade Commission Act without the absolute prohibition of the use of the trade-mark in accordance with the opinion of the Court below. The Commission, after due consideration, may well find that it can make an order which meets the requirements of the Federal Trade Commission Act and still permits the respondent to use its trade-mark. In that event the question now presented to this Court falls. Any incompatibility between the two statutes does not arise unless and until the Commission after due proceedings finds that it cannot comply with both.

4.

The Court below was clearly correct in holding that the respondent's right to use its Red Cross trade-mark continues. Petitioner's argument to the contrary is a contention that when Congress created the right in 1910 it did not have in mind the public interest, but this later conception was embodied in the amendment of 1938 to the Federal Trade Commission Act. But nothing is presented to support the contention that Congress was oblivious of the public interest in 1910. Also, in these last few years when Congress has had this matter under active consideration it surely knew of its 1938 amendment to the Federal Trade Commission Act and the policy embodied therein. Nevertheless it has unmistakably expressed its conception that the rights of the pre-1905 users continue until Congress does something about it. We might add that, in the argument below, Commission's counsel stated in open Court, in reply to questions from the Bench, that there was no difference between the respondent and any other pre-1905 user, so that

if the Commission could terminate *instanter* this respondent's use of the trade-mark it could do the same to the other pre-1905 users.

CONCLUSION

It is respectfully submitted that the petition for a writ of certiorari should be denied.

EDWARD H. GREEN
EMERY H. SYKES
Attorneys for A. P. W. Paper Company, Inc., Respondent.

FILE COPY

Office - Supreme Court, U. S.
FILED
JAN 2 1946
CHARLES ELMORE CROPLEY
CLERK

Supreme Court of the United States

OCTOBER TERM, 1945

No. 320

FEDERAL TRADE COMMISSION,

Petitioner,

v.

A. P. W. PAPER COMPANY, INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF IN BEHALF OF JOHNSON & JOHNSON *AMICUS CURIAE*

KENNETH PERRY,
Attorney for Johnson & Johnson.

HECTOR M. HOLMES,
of Counsel.

INDEX

	PAGE
Summary Statement of Interest, Position, and Argument	1
Matters Deemed Pertinent and Important by Congress but Disregarded by the Federal Trade Commission	5-6
Argument:	
1. It is *not* the emblem of the American National Red Cross that these "good faith" users use, but their *own* respective trade-marks deriving independently from a common and ancient source	6
2. Use by "good faith" users is to be distinguished from use that is false and deceptive from its inception	15
There Is no Precedent for the Commission's Action	17
The decision of the Commission would uproot fundamentals of trade-mark law	18
Conclusion	21-22

CITATIONS

Cases:

Federal Trade Commission v. *Algoma Lumber Co.*, 291 U. S. 67	17
Jacobs v. *Iodent Chemical Co.*, 41 F. (2d) 637	18
Loonen v. *Dietsch*, 189 Fed. Rep. 487	14-15
Socony-Vacuum Oil Co. v. *Oil City Refiners*, 44 F. Supp. 439; aff'd 136 F. (2d) 470	18
The Trade-mark Cases, 100 U. S. 82	15
United Drug Co. v. *Rectanus Co.*, 248 U. S. 90	18

PAGE

Statutes:

Act of June 23, 1910, 36 Stat. 604, 36 U. S. C. 4.. 4, 15

American National Red Cross Act of January 5, 1905; Preamble, 33 Stat. 599, Historical Note to 36 U. S. C. A. 1 15

Swiss Coat of Arms Act, 22 U. S. C. A. sec. 248; 49 Stat. 1557 21

Trade-mark Act of 1870, 16 Stat. 210; Rev. Stat. sects. 4937, 4941 15

Congressional material:

90 Cong. Rec. (Jan. 19, 1944) pp. 396-411; and (April 24, 1944) pp. 3698-3721 5

H. R. 14330, 65th Cong. 3d Sess. 4

H. R. 6911, 7221, 7337, 7420, 77th Cong. 2d Sess.; S. 469 and S. 1398, 78th Cong. 4

Hearings before House Foreign Affairs Committee on H. R. 6911, 77th Cong. 2d Sess., pp. 9, 45, 263-265, 371 et seq., 414, 416 ...4, 5, 16, 20, 21

Hearings before House Foreign Affairs Committee on S. 469, 78th Cong. 2d Sess., pp. 116, et seq. ... 2, 5

Hearings before Senate Subcommittee of the Committee on the Judiciary on S. 2441 and H. R. 7120, 77th Cong. 2d Sess. 5

House Reports
2387, 77th Cong. 2d Sess. 5
2054, 78th Cong. 2d Sess. 5

Senate Reports
534, 78th Cong. 1st Sess., p. 4 ..... 3, 5

Miscellaneous:

Preliminary Conference of Geneva of 1863 7

Geneva Convention of 1864 (Treaty Series No. 847; 47 Statutes at Large 2074, Chapter VI, Article 19) 6, 7, 8, 9, 10, 11, 21

PAGE

Geneva Convention of 1929 ..... 8, 9, 21

Actes de la Conférence de Révision Réunie à Genève, du 26 juin au 6 juillet 1906, printed in Geneva by Imprimerie Henri Jarrys Rue de la Treille, 4, 1906, pp. 63, 162-163 9

Actes de la Conférence Diplomatique (1929) Convoquée par le Conseil Fédéral Suisse pour la Révision de la Convention due 6 juillet 1906 pour l'Amélioration du Sort des Blessés et Malades dans les Armées en Campagne, printed by the Printing Shop of Journal of Geneva, Geneva, 1930, p. 251 9

Annals of the Barber-Surgeons of London, by Sydney Young, London, 1890, p. 440 12

La Berceau de la Croix Rouge, by A. Francois .. 8

Blue Cross Plan, 2d War Conference, Reports and Discussions, Hospital Service Plan Commission, American Hospital Association, 1943, p. 5 20

Bulletin International des Societes de la Croix-Rouge, October 1910, pp. 172-207 8

The Catholic Encyclopedia, 1909 Edition, Vol. VI, p. 453 13

Century Dictionary and Encyclopedia, 1906 ed., Vol. 2, p. 1361 9

Compte Rendu de la Conférence Internationale réunie à Genève les 26, 27, 28 et 29 Octobre 1863—Supplement des Bulletin International des Sociétés de la Croix-Rouge T. XXXV, No. 137, V. Janvier 1904, pp. 14-15 8

Dictionaire Historique et Bibliographique de la Suisse, Neuchatel 1930, Vol. 5, p. 28 8

Encyclopaedia Britannica, 1945 ed., Vol. 6, p. 670 9

Encyclopedia Universal, Europeo-Americano, Barcelona, Spain, 1907, Vol. 36, p. 1550 8

PAGE

Étude sur la Convention de Genève, Librairie de Joël Cherbuliez, Paris, 1870, pp. 231-232 8

Flags of the World, Past and Present, by V. Wheeler-Holohan, 1939, p. 232 9

Genoa, How the Republic Rose and Fell by J. Theodore Bent, London, 1881, Chapter XI, p. 2 13

Handbook of Heraldry by John E. Cussaus, London, 1893, pp. 59-61 10

A Health Plan for the State of New York, by Louis H. Pink, published by Associated Hospital Service of New York, 370 Lexington Avenue, New York City, on December 11, 1945, p. 12 19

The History of the Great Plague in London in the Year 1665 by a Citizen Who Lived the Whole Time in London, London, 1819, p. 88 11

History of London from its Beginning to the Present Time, by William Maitland, London, 1775, pp. 1256-1257 13

Medical Work of the Knights Hospitallers of Saint John of Jerusalem, by Lt. Col. (now Major Gen.) Edgar Erskine Hume, Johns Hopkins Press, Baltimore, 1940 14

Persian Language and Literature, by Marcellus Donald de Redlich, printed by Haig Herant-Pakradooni, International Printing Co., Philadelphia, 1929 9

The Red Cross by Clara Barton, published by the International Society, Newark and Chicago, 1898, p. 680 16

La Révision de la Convention de Genève—Étude Historique et Critique suivie d'un Projet de Convention Révisée, Red Cross Headquarters, Geneva, 1898, pp. 9-10, 24 9

PAGE

Social Work Yearbook, 1945, published by Russell Sage Foundation, New York, p. 570 21

The Story of the Blue Cross, by Louis H. Pink, Public Affairs Pamphlet No. 101, 1945, p. 4 20

The Story of Medicine in the Middle Ages, by David Riesman, New York, 1935, pp. 17-27 ... 14

A Treatise on Heraldry, British and Foreign with English and French Glossaries, New and Enlarged, in two volumes, by John L. Woodward, Edinburgh and London, 1890, p. 160 .. 9

Der Vithangtiekens in Verbund mit Geschiendenis en Volksleven Beschound, Amsterdam, 1868, Vol. 1, pp. 398-399 14

Illustrations:

Definition of red cross in *Oxford English Dictionary* ..... appended

National Emblem of England (St. George's Cross) ..... appended

Red Cross Ensign of Tonga ..... appended

Frontispiece of *Historical Collection of Orders of Knighthood* ..... appended

Supreme Court of the United States

OCTOBER TERM, 1945

No. 320

FEDERAL TRADE COMMISSION,

Petitioner,

v.

A. P. W. PAPER COMPANY, INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF IN BEHALF OF JOHNSON & JOHNSON *AMICUS CURIAE*

Summary Statement of Interest, Position, and Argument

This brief is filed on behalf of Johnson & Johnson, New Brunswick, New Jersey, pursuant to Subdivision 9 of Rule 27 of the Rules of this Court. It is intended to be supplementary to the brief filed in behalf of A. P. W. Paper Company, Inc., and is not designed as a complete presentation of the case.

By this proceeding, and other similar proceedings now pending and presumably awaiting the decision of this Court in this proceeding, the Federal Trade Commission

has undertaken to terminate all interstate trademark use of the symbol of a red cross and of the words "red cross."[1]

Johnson & Johnson, a manufacturer of surgical dressings, has used the symbol of a red cross and the words "red cross" as its trademark on products of its manufacture continuously since 1879. The other few remaining pre-1905 users in interstate commerce are equally interested.[2] We refer among others to John V. Canepa Co. of Chicago, Illinois, which in 1872 adopted as its trademark this symbol deriving from the flag of Canepa's native city of Genoa and the coat of arms of the Duke of Genoa, and which has used it as its trademark on its macaroni products continuously ever since; and to Chas. B. Silver & Son, of Havre de Grace, Maryland, user of the name and symbol as a trademark on canned goods of its manufacture continuously since 1876.[3]

Johnson & Johnson, in common with the few remaining pre-1905 users, has a vital interest in the issue of this case. If the Federal Trade Commission's position is sus-

---

[1] In its petition for writ of certiorari, the Commission stated (p. 12) that the "decision by this Court, if it grants certiorari, will govern the application of the Trade Commission Act to all such pre-1905 users," and (p. 13) that "the deception of those presently misled—the careless, ignorant, illiterate or foreign-born—cannot be materially curbed by an accompanying corrective statement such as the court below permits the Commission to require."

[2] Not over ten pre-1905 users in interstate commerce were known to be surviving at commencement of Congressional hearings on April 14, 1942. All but three of these present pre-1905 users, namely, Johnson & Johnson, United States Shoe Corporation, and A. P. W. Paper Company, Inc., are small firms with geographical limitation on distribution of product. As to appearances and testimony of surviving users, see hearings cited f.n. No. 9 *infra*.

[3] As to origin of Canepa's trademark and its use since 1872, see Hearings before the Committee on Foreign Affairs, House of Representatives, Seventy-eighth Congress, Second Session, on S. 469, p. 116 *et seq.* As to Chas. B. Silver & Son, see same Hearings, p. 3, *et seq.*

tained, nothing will remain of the sanction given by Congress to such pre-1905 users by the Act of 1910. The Commission will proscribe all use on the premise that only complete suppression can satisfy. The Commission may immediately terminate all use by merely finding that there are people, however unthinking and credulous, the "careless, ignorant, illiterate," who might associate any trademark use with the American National Red Cross.

Congress has always considered that the questions whether, in the public interest, (a) there shall be termination of pre-1905 commercial use, and, if so, (b) the conditions under which such termination shall be effected, are within its province to determine. Congress has consistently refused any abrupt termination as not in the public interest, and as inflicting unwarranted and unduly severe hardship on "good faith" users.[4]

There are facts and historical considerations surrounding the adoption and the continued use of these trademarks by pre-1905 users, not taken into account by the Commission, which Congress has deemed to be pertinent and important in its long and painstaking consideration of what the public inferest requires. In the light of these pertinent and important facts Congress has continued to regard the *bare naked use* of these trademarks as lawfully obtaining.[5] It has further regarded as within its own determination what, if anything further, the public interest requires shall be done.

---

[4] "It was recognized, however, that there have been good faith uses of the symbol." S. Rep. No. 534, 78th Cong., 1st Sess., p. 2.

[5] In the last Congressional Committee Report to be filed, that of the Committee on Foreign Affairs of the House, dated December 11, 1944, the Committee stated "that under existing law, there are legal uses of the symbol by commercial users". (See decision of the Circuit Court of Appeals in this case, 149 F. (2d) 424, 427.)

In the hearings in 1942, 1943 and 1944, Congress had before it and considered the matter of possible deception. It regarded possibility of deception as only one of the several matters, including equitable treatment of "good faith" users, to be taken into consideration in a situation which Congress itself had created, and over which it obviously considered it had retained jurisdiction so far as concerns the mere use of the name and symbol as a trademark by pre-1905 users. The Congressional sanction of "good faith uses" does not extend to any and all manner of use. Congress did unquestionably give the Commission authority to control abuses, deceptive accompaniments and practices. The issue in this case, however, is limited to bare naked use of the name and symbol. It is, therefore, in the field of which Congress has shown its intention to retain jurisdiction.[6]

Seldom has a question received more painstaking and thorough consideration by Congress. What Congress did in 1905 and 1910 is already before the Court. In 1919 a bill was introduced to abolish commercial use. The proponents were heard but no further action was taken.[7]

During the three years, 1942, 1943 and 1944, there were introduced in Congress seven bills[8], all proposing ulti-

---

[6] One reason advanced for proposed legislation that would eventually terminate the rights of the pre-1905 users was the alleged inference of association of the American National Red Cross with the trademarked products (Hearings before Committee on Foreign Affairs, House of Representatives, on H. R. 6911, 77th Cong., 2d Sess., p. 9). S. Rep. No. 534, 78th Cong., 1st Sess., p. 4, stated that "the protection of the public against possible deception" was a factor in proposing tapering off legislation.

[7] H. R. 14330, 65th Cong., 3d Sess., reprinted in Hearings before the Committee on Foreign Affairs on H. R. 6911, 77th Cong., 2d Sess., p. 371 *et seq.*

[8] In the Seventy-Seventh Congress (1942) H. R. 6911, 7221, 7337, and 7420; and S. 2441. In the Seventy-Eighth Congress (1943) S. 469 and (1944) S. 1398.

mate termination of commercial use of the symbol and words. No bill proposed immediate termination. The range of time proposed by the various bills was from one to twenty-five years. Hearings on these bills were held by Committees of both Houses of Congress.[9] These hearings extended over a period of approximately thirty-two months.[10] The consideration given by the Committees of Congress on this occasion is reflected, in part, in the more than eight hundred pages of printed "Hearings." In the first House hearings witnesses were heard or written statements received from some forty-three parties, in the second House hearings from some thirteen parties, and in the Senate hearings from some eleven parties. Debates on the floor of the Senate occupied forty pages of the Congressional Record.[11] There were three committee reports to Congress, two by the Committee on Foreign Affairs of the House,[12] and one by the Committee on the Judiciary of the Senate.[13] *Congress felt it essential to weigh the conflicting interests and equities of the public, the American National Red Cross, and the commercial users in the light of considerations and historical facts, of which the Commission took no cognizance.*

The Commission has disregarded, but Congress has deemed pertinent and important:

(1) that it is *not* the emblem of the American National Red Cross that these "good faith" users use; but

---

[9] Hearings before the Committee on Foreign Affairs, House of Representatives, 77th Cong., 2d Sess., on H. R. 6911, Hearings before A Subcommittee of The Committee on the Judiciary, United States Senate, 77th Cong., 2d Sess., on S. 2441 and H. R. 7420; and Hearings Before the Committee on Foreign Affairs, House of Representatives, 78th Cong., 2d Sess., on S. 469.

[10] April 14, 1942 to December 8, 1944.

[11] 90th Cong. Rec. (Jan. 19, 1944), pp. 396-411, and (April 24, 1944) pp. 3698-3721.

[12] H. Rep. No. 2387, 77th Cong., 2d Sess. (July 24, 1942), and No. 2054, 78th Cong., 2d Sess. (December 11, 1944).

[13] S. Rep. No. 534, 78th Cong., 1st Sess. (November 15, 1943).

their *own* respective trademarks deriving independently from a common and ancient source.

(2) that use by the "good faith" users is to be distinguished from use that is false and deceptive from its inception.

ARGUMENT

1. It is *not* the emblem of the American National Red Cross that these "good faith" users use, but their *own* respective trade-marks deriving independently from a common and ancient source.

The complaint alleges (R. p. 16):

> "PARAGRAPH SIX: The Red Cross name and emblem as provided by the Geneva convention of 1864 soon became heralded throughout the world. Various manufacturers and commercial houses in the United States were quick to capitalize on its popularity and public appeal. In a few years following the conclusion of the Geneva convention, American manufacturers began to use trade-marks employing the Red Cross name and emblem, and articles of commerce bearing the Red Cross name and emblem began appearing all over the United States. This practice began as early as 1872, soon became indiscriminate, and has continued."

No evidence was introduced to support this allegation. No finding was made to this or any similar effect. In the "FINDINGS AS TO THE FACTS", the only reference related to this allegation is "Paragraph Twelve" (pp. 47-48), reading:

> "Paragraph Twelve: It is insisted by respondent that the use of a red cross as an emblem or insignia dates back several centuries and that such use long antedated the Red Cross organization. The *record indicates,* however, that the use of a red cross in the

particular form and coloration here involved—a Greek red cross on a white ground—had its origin in the Geneva Convention of 1864. The emblem was formed by reversing the colors of the flag of Switzerland. The red cross used prior to that time was usually in the form of an ecclesiastical cross or in some other form differing from the Greek red cross." (Italics furnished.)

This "finding" appears to concede that the use of the symbol of a red cross and of the words "red cross" is ancient, except for a "Greek red cross on a white ground". There is *no testimony or other evidence* in the record to support the finding that the Greek red cross on a white ground had its origin in the Geneva Convention of 1864.

Responsible historical sources establish that it was not through any adoption and use initiated at Geneva in 1864 that the red cross acquired its significance of charity, mercy, care of wounded, sanctuary, hospitalization, relief of suffering, sanitation, medicine, surgery, and products associated with these fields. Quite the contrary. It would have been difficult for the conferees in 1864 to have chosen an emblem of richer historical significance, or an emblem at that time of more universal use and acceptance in Christian countries. The association of the red cross with these fields antedated 1864 by centuries. It is an inescapable conclusion that the Geneva Convention adopted this symbol not to give it significance, but because this symbol already had that significance. This the founders themselves recognized.

Gustave Moynier was a distinguished Swiss attorney, president of the Geneva Society of Public Utility that called the preliminary conference of 1863, a delegate of the Swiss Government at the Conference of 1864, and first president of the International Committee from 1864 to

1910.[14] As to the adoption of the symbol, Mr. Moynier stated in his *A Study of the Geneva Convention*[15] published 1870 that "the symbol of charity is that which responds best to the sentiments by which the promoters of the convention were animated and to the spirit of this treaty," and he referred further to it as "the bloody cross of Calvary framed in a shroud of innocence."

There is nothing in the Convention of 1864 nor in the minutes of the Conference to support any assertion that "the emblem was formed by reversing the colors of Switzerland". Reference to the Swiss colors in the 1906 revision of the Geneva Convention was an afterthought in an effort to strip the emblem of its religious association, to make it more acceptable to Turkey, Egypt, Persia, and other non-Christian countries. The fact that the cross could not be separated from its ancient religious significance by mere parliamentary pronouncement became quite clear, with the result that eventually in the 1929 revision of the Convention, the red crescent (the religious symbol of certain Mohammedan countries), and the red lion and sun (the spiritual symbol of the Persians) were

---

[14] Compte Rendu de la Conférence Internationale réunie à Genève, les 26, 27, 28 et 29 Octobre 1863—Supplement des Bulletin International des Sociétés de la Croix-Rouge T. XXXV, No. 137, V. Janvier 1904, pp. 14-15.

Bulletin International des Sociétés de la Croix Rouge, October 1910, pp. 172-207.

Gustave Moynier by Bernard Bouvier.

La Berceau de la Croix Rouge by A. Francois.

Dictionaire Historique et Bibliographique de la Suisse, Neuchatel 1930, Vol. 5, p. 28.

Encyclopedia Universal, Europeo-Americano, Barcelona, Spain, 1907, Vol. 36, p. 1550.

[15] Étude sur la Convention de Genève, Librairie de Jöel Cherbuliez, Paris, 1870, pp. 231-232.

put on an equal footing with the red cross as recognized emblems of the convention.[16]

The only reference to the symbol in the Convention of 1864 is in the provision of Article 7 that "the flag and arm band shall bear a red cross on a white ground." The minutes of the convention are silent on the form, character, and source of the cross. There is no suggestion of newness, uniqueness, or exclusiveness. In fact, there is no mention of red cross in the convention other than the words just quoted.

Nothing can be found to support the Commission's "finding" that "The red cross used prior to that time (1864) was usually in the form of an ecclesiastical cross or in some other form differing from the Greek red cross". Heraldic authority is to the contrary.[17] (And see illustrations appended to this brief.) Apart from the fact that the word "Greek" was never mentioned in the

---

[16] Treaty Series No. 847; 47 Statutes at Large 2074, Chapter VI, Article Nineteen. As to recognition of the symbol as having religious significance and the effort to strip it of that significance, see *La Révision de la Convention de Genève—Étude Historique et Critique suivie d'un Projet de Convention Révisée*—a publication of the International Committee of the Red Cross at its headquarters, Geneva, 1898, pp. 9-10, 24; *Actes de la Conférence de Révision Réunie à Genève*, du 26 juin au 6 juillet 1906, printed in Geneva by Imprimerie Henri Jarrys Rue de la Treille, 4, 1906, pp. 63, 462-163; and *Actes de la Conférence Diplomatique (1929) Convoquée par le Conseil Fédéral Suisse pour la Révision de la Convention du 6 Juillet 1906 pour l'Amélioration du Sort des Blessés et Malades dans les Armées en Campagne*, printed by the Printing Shop of *Journal of Geneva*, Geneva, 1930, p. 251. As to significance of the red crescent and red lion and sun, see *Encyclopaedia Britanniea*, 1945 ed., Vol. 6, p. 670; *Flags of the World, Past and Present* by V. Wheeler-Holohan, 1939, p. 232; and *Persian Language and Literature* by Marcellus Donald de Redlich; printed by Haig Herant-Pakradooni, International Printing Co., Philadelphia, 1929.

[17] *A Treatise on Heraldry, British and Foreign with English and French Glossaries*, New and Enlarged, in two volumes, by John L. Woodward, Edinburgh and London, 1890, p. 160.

convention nor in any early definition of the symbol, the very word "Greek" in describing the character of the cross is indicative of origin other than and earlier than Geneva 1864. A Greek cross is authoritatively defined as "an upright crossed in the middle at right angles by a beam of equal length."[18] In heraldry it is the basic cross of which many others are variations.[19] Certainly there is nothing novel in coloring the cross red, a color commonly associated with crosses in attaching "the memory of the bloody cross of Calvary," as Moynier expressed it (*supra*). This red cross is the national emblem of England. (See illustration appended to this brief.)

The words "red cross" and the single hyphenated word "red-cross" were in common usage in the English language for at least four hundred years prior to 1864. In the eighteen editions of Webster between 1828 and 1890 the only definition for the word is as follows:

> "red cross, n. The cross of St. George, the national emblem of the English."

This red cross flies on the Union Jack today.

In the Webster's edition of 1890 appears for the first time a *second* definition:

> "(b) the Geneva cross. See Geneva convention and Geneva cross, under Geneva."

The Century Dictionary, in its edition of 1889, gives fifteen lines to historical uses and six lines to Geneva 1864.

The fullest treatment is that in the *Oxford English Dictionary*, 1933, which devotes seventy-four lines to red cross. It is of such interest that we are appending to this brief a reproduction of it in double actual size for ease in reading.

---

[18] *Century Dictionary and Encyclopedia*, 1906 ed., Vol. 2, p. 1361.

[19] *Handbook of Heraldry* by John E. Cussaus, London, 1893, pp. 59-61.

The first definition of the *Oxford English Dictionary* is as follows:

> "red cross, red-cross
> 1) a cross of red colour; esp. a. as the national emblem of England; St. George's Cross."

Under this definition follow six instances of such usage in 1430, 1578, 1601, 1652, 1805, and 1838. The instances given do not pretend and are not intended to be exhaustive and inclusive of all written use, but rather are typical of usage in the language at the times of instances cited.

The second use defined in the *Oxford English Dictionary* is as a sign of medical quarantine in sanitation—"as the mark made on the doors of infected houses during the London plagues of the 17th century." A portion of the ordinance of the Council of the City of London adopted in 1665 reads:[20]

> "Every Visited House to be Marked.
> "THAT every house visited, be marked with a red cross of a foot long, in the middle of the door, evident to be seen, and with these usual printed words, that is to say 'Lord have mercy upon us', to be set close over the same cross, there to continue until lawful opening of the same house."

That a red cross should be used for this purpose is not at all surprising, for the symbol had already at that time (1665) become firmly attached to medicine. The Society of Barber-Surgeons of London was granted its charter by King Edward IV in 1462. The Barber-Surgeons constituted the medical profession of the day. Their symbol of the equilateral red cross was officially confirmed to them

---

[20] *The History of the Great Plague in London in the Year 1665* by a Citizen Who Lived the Whole Time in London, London, 1819, p. 88.

as early as 1589.[21] They had derived their use of the symbol from their own religious origin associated with hospitals, which, in those days, were exclusively ecclesiastical institutions.

In the *Oxford English Dictionary* there are other additional uses listed before mention of use deriving from Geneva, 1864, the last in point of time. It is clear from this source alone that the symbol did not come into being through the Geneva Convention of 1864; that it was not created by the Geneva Convention of 1864; and that it was not unique to the societies formed under the Convention of 1864. On the contrary, the use under the Convention of 1864 was the last use in the field. It could scarcely expect to preempt so rich an historical usage, including usage signifying the emblem of England.

In addition to the emblem of England, the cross in some color, frequently red, appears in the flag of nearly every Christian country. A red cross appears in the state and territorial flags of Alabama, Florida, Maryland, and Hawaii; in the national flags of Great Britain, Australia, Iceland, India, South Africa, Canada, New Zealand, Jamaica, Latvia, and Tonga; in the merchant flags of Great Britain, Iceland, Latvia, Australia, India, Canada, South Africa, New Zealand, and Jamaica; in the city flags of Jerusalem, Constantinople, London, and Geneva; and in the early North American flags of John Cabot (1497), Colonial Flag of 1620, Governor Endicott Flag (1634), New England Ensign (1652), Governor Andros Flag (1686), Escutcheon Ensign (1701), English Red Ensign (1705), Newberry, Massachusetts (1720), New England (1737), Taunton Flag (1774), Bunker Hill Flag (1775), First Navy Ensign Cambridge Flag (1775), and Westmoreland Co., Pennsylvania (1775).

---

[21] *Annals of the Barber-Surgeons of London*, by Sidney Young, London, 1890, p. 440.

Dating from the Crusades, the red cross has been a symbol of trade and commerce; in shipping, banking, medicine, by barbers, goldsmiths, silversmiths, armorers, card makers, curriers, printers, as a store sign of identification, and as the symbol of nationally sponsored enterprises.

In the category of nationally sponsored enterprises may be listed the trade-marks of Hudson's Bay Company, East India Company, African Company, and South Sea Company. Each bears the red cross of St. George, the Greek red cross on a white ground. That of the Hudson's Bay Company has been in use in world-wide trade since grant of Letters Patent by Charles II in 1670; and that of the East India Company since grant of Queen Elizabeth in 1601.[22]

The Genoese spread the mark far and wide in the commerce of the thirteenth and fourteenth centuries. St. George had been the patron saint of the Genoese Republic from early years.[23]

> "Under the banner of the Red Cross, and the emblem of St. George, countless galleys left this part of Genoa day by day to bring back from far distant lands the wealth of India, China, and the East. No port or harbour of the then known world was unvisited by them; from Moorish Spain, from England, Flanders, and the far north they brought back cargoes of merchandise * * * In a word, these mediaeval Italian republics, Genoa, Pisa, and Venice, rewove the web of international intercourse which the barbaric hordes had broken."[24]

---

[22] *History of London from its Beginning to the Present Time*, by William Maitland, London, 1775, pp. 1256-1257.

[23] *The Catholic Encyclopedia*, 1909 Edition, Vol. VI, p. 453.

[24] *Genoa, How the Republic Rose and Fell*, by J. Theodore Bent, London, 1881, Chapter XI, p. 2.

The commercial use derives and dates, in fact, from the Crusades.

> "The red crosses were the most numberous, in addition, it was the sign of the Crusaders. The innkeepers of the Middle Ages hung them out as signs to passing Crusaders; then, when they had finished their journeys to the Holy Land and had earned lifelong fame by so doing, naturally used this cross afterwards as a sign in their profession or trade."[25]

The use of a red cross as a trade-mark on medical products was quite natural. It was the symbol of hospitalization, medicine, and surgery, deriving from the Church that in the Middle Ages was the sponsoring agency for these activities. Early medical practitioners were monks who traveled about. The mark of the Church became the mark of the activity of the Church.[26] Moreover, as stated above, the red cross was the confirmed emblem of the Barber-Surgeons, the medical practitioners of the Sixteenth and Seventeenth Centuries.

In his book on the Knights Hospitallers of the Order of Saint John of Jerusalem,[27] General Hume reviews the medical work of the order from its beginning in the Crusades to today, and the association, beginning in the Crusades and enduring today, of the emblem of this holy Order (the white cross on a red ground) with hospitalization, medicine, and surgery.

Judge Learned Hand, in the case of *Loonen* v. *Dietsch*, 189 Fed. Rep. 487 (S. D. N. Y. 1911), sustained a pre-1905 red cross trademark for toothbrushes. Speaking at a time closer to the conditions prevailing prior to 1905, he

---

[25] *Der Vithangtiekens in Verbund mit Geschiendenis en Volksleven Beschound, Amsterdam*, 1868, Vol. I, pp. 398-399.

[26] *The Story of Medicine in the Middle Ages*, by David Riesman, New York, 1935, pp. 17-27.

[27] *Medical Work of the Knight Hospitallers of Saint John of Jerusalem*, by Lt. Col. (now Major Gen.) Edgar Erskine Hume, Johns Hopkins Press, Baltimore, 1940.

found (p. 489) that no bad faith was involved in the pre-1905 adoption of the mark, that the mark "is an easily caught symbol with an indefinite atmosphere, a kind of aseptic aura, connotating clean preparation and careful protection from dirt. The complainant did only what others have done in exploiting that popular conviction, and the conclusion is pretty clear that those who so selected it not only had some such reason in mind, but succeeded in making the suggestion they intended to others * * *. It has been used on hospital ambulances, upon medicaments, upon doctors' motor cars, upon barber shops, upon laundries, and for military field service not connected with the Red Cross Society. In short, until the legislation of 1905 * * *, it had been quite instinctively adopted for many uses which were congruous with the chief objects of the society, but which did not indicate that the society had anything to do with them, or certainly with the frequency of use ceased to do so. Finally, Congress has clearly recognized that fact by permitting all those who prior to 1905 had used the mark lawfully, to continue. This appears beyond question in the Act of June 23, 1910, C. 372, 36 Stat. 604."

2. Use by "good faith" users is to be distinguished from use that is false and deceptive from its inception.

Those who, like Johnson & Johnson, adopted the ancient name and symbol as a trade-mark prior to 1881, did so before there was an American National Red Cross in this country.

As to them the American National Red Cross is the second comer.[29]

---

[29] The first trade-mark registration act was that of 1870. (16 Stat. 210; Rev. Stat. sects. 4937, 4941.) It was declared invalid in 1881. (*The Trade-mark Cases*, 100 U. S. 82.) Therefore, there were no Federal registrations prior to 1870. The American National Red Cross did not file its trade-mark registration until 1897. It was registered in the United States Patent Office as No. 30,428, under date of July 27, 1897.

Those who adopted subsequent to 1881 and prior to 1905, did so at a time when the American National Red Cross was so small and obscure that public knowledge of its existence could have been very limited at best and its future growth not foreseen. Writing in 1898 on the failure of the Society to attain recognition and prominence, Miss Clara Barton said[30] "* * * thus the Red Cross has stood, unrecognized in the shadows of obscurity all the eighteen years of its existence among us, waiting for the sure, alas, too sure, touch of war, to light up its dark figure, and set in motion the springs of action." In 1902 the receipts of the American National Red Cross were $343.80. Membership in 1902 was 123; in 1903, 298; in 1904, 663; and in 1905, 3,357. Not until 1916, with the first World War, did membership exceed 22,500.[31]

Obviously the early pre-1905 adopters of the name and symbol for commercial usage were not poachers. Their adoption was not for the purpose of deception, nor was their use deceptive or improper. It contained no false representation. There was no good will of a yet to be founded American National Red Cross upon which to trade. Trade-mark users were in those days adopting crosses of every form and every color, *far more often of a form other than Greek and of a color other than red.*[32] Only ten of the presently surviving trade-marks in use in interstate commerce appear to have been of the Greek red cross (*supra*, f. n. 2).

---

[30] *The Red Cross* by Clara Barton, published by the International Society, Newark and Chicago, 1898, p. 680. See also pp. 5, 6 to effect that the news of accession of the Government of the United States to the Treaty of Geneva in 1882 was announced to the people of America only in "a little four-line paragraph in the Congressional doings of the day in the *Evening Star.*"

[31] House Hearings, Committee on Foreign Affairs, on H. R. 6911, 77th Cong., 2d Sess., pp. 263-265.

[32] House Hearings Committee on Foreign Affairs, on H. R. 6911, 77th Cong., 2d Sess., pp. 418-425.

The Senate Committee described the early users as "good faith" users (*supra*). Continued use by these users since 1905 has been with the expressed approval of Congress, fully cognizant of all the facts. In 1910 the American National Red Cross agreed that it did "not want to disturb" those users.[33]

For these reasons Congress has shown grave concern for the equities of these "good faith" users. Congress has recognized that although a tapering off period (with the right for a substantial time to say "formerly red cross") might diminish the damage, nevertheless, the loss of a long-established good will, built up over a long period of time, could be most injurious, if not ruinous, especially to a small, highly competitive business. If such a manufacturer must brand his product with a new mark, he will then be offering not the old, familiar brand, but an unknown brand, in competition with long-established and well-known brands; and he will, to a substantial extent, be starting all over again.

There is no Precedent for the Commission's Action

The Commission can point to no case where a trademark innocently adopted, without falsity or deception, and a good will lawfully developed and established, have been wiped out because of a second comer or because an earlier comer has eventually become dominant, regardless of some possible public confusion.

In all the cases cited by the Commission the labels or statements ordered discontinued were false and untruthful from inception.[34] Where good will has been innocently

[33] House Hearings, Committee on Foreign Affairs, 77th Cong., 2d Sess., on H. R. 6911, p. 45.

[34] In the case of *F. T. C.* v. *Algoma Lumber Co.*, 291 U. S. 67, defendant advertised yellow pine (an inferior pine) as "white" pine, which is a superior product. The Commissioner's brief is in error in stating that this was a case where there was no initial deceptive act.

and in good faith established and attached to trade-mark use in a certain field or area, an earlier user who becomes dominant cannot enjoin such good faith user (*United Drug Co.* v. *Rectanus Co.*, 248 U. S. 90). Nor can a second user who becomes dominant by national advertising and distribution, enjoin the small, local first user of the same mark on the same goods (*Jacobs* v. *Iodent Chemical Co.*, 41 F. (2) 637, C. C. A. 3rd; involving the well-known "Iodent" toothpaste). It makes no difference that continued use by an innocent second comer in his own territory will cause some public confusion. (*Socony-Vacuum Oil Co.* v. *Oil City Refiners*, 44 F. Supp. 439; aff. 136 F. (2) 470, C. C. A. 6th.) The court pointed out (44 F. Supp. 439, 440) that any public confusion resulted from no wrongful conduct, and that it was not therefore incumbent on the Court to alleviate any such confusion.

Pre-1905 users are using their own marks (not the emblem of the American National Red Cross) in their own limited fields. Such mere use is honest and truthful. The goods thus marked are the products that the public has been buying under this identifying trade-mark for over half a century. This mark enables the public to identify the products that the public has found to be good and wants.

The decision of the Commission would uproot fundamentals of trade-mark law

A decision sustaining the Commision would, for the first time so far as we can determine, destroy a trade-mark and good will, honestly and lawfully and innocently established and developed, the use of which is truthful and honest and not tinged with fraud, solely because another but no more lawful or rightful user has become dominant, whereby there may be "careless, ignorant, illiterate" people who will believe there is some connection.

The situation faced today by trade-mark owners of the red cross is not unlike that which may be anticipated by owners of a trade-mark of a red star, a blue cross, a green cross, or a white cross. *They are threatened with loss of their property through no wrongful act or negligence of their own, but rather through the acts of another in attaining extraordinary prominence, in becoming better known to the public.*

The red star is an old and valuable trade-mark of of one of the country's leading department stores. The red star is becoming increasingly famous and recognized in this country as the emblem of the United Socialist Soviet Republics. Its continued use by the department store as a trade-mark will almost surely suggest, if it does not already suggest, to some uninformed persons, "the careless, ignorant, illiterate," a connection with the U.S.S.R. In that likely event, continued use of its red star trade-mark by the department store will become an unfair and deceptive practice, to the same extent as present use of the red cross as a trade-mark.

The same is true of the many blue cross trade-marks; for the blue cross is rapidly attaining acceptance as the emblem of the Blue Cross Hospitalization Plan. This Blue Cross movement is hospital sponsored, is now in effect in 3,500 hospitals, and includes some 20,000,000 paid memberships in the United States, Canada, and Puerto Rico.

> "The growth of the Blue Cross movement—20 million in a twelve year period, most of it in the last five years—is a practical proof of what can be done through voluntary effort."[35]

The growing prominence of the Blue Cross Hospitalization Plan may be compared with the experience of the

---

[35] *A Health Plan for the State of New York*, by Louis H. Pink, published by Associated Hospital Service of New York, 370 Lexington Avenue, New York City, on December 11, 1945, p. 12.

American National Red Cross. In 1902 the membership of the American National Red Cross was 123 members, and its receipts for the year 1902 were $343.80.[36] In only two years, namely 1917 to 1919, of the period 1900 to 1941, inclusive, did the total membership of the American National Red Cross, including both adult and junior membership, exceed 20,000,000. Even as recently as 1941 it was less than 20,000,000. The Blue Cross Hospitalization Plan is *growing rapidly*, at the rate of "200,000 members a month, or 2.4 million a year.[37]" Continued use of the blue cross as a trade-mark, as by one of the country's leading pharmaceutical manufacturers, will almost surely suggest, if it does not already suggest, to some uninformed persons, "the careless, ignorant, illiterate," a connection with the Blue Cross Hospitalization Plan. In that likely event, continued use of its blue cross trade-mark by the pharmaceutical manufacturer will become unfair and deceptive, to the same extent as present use of the red cross as a trade-mark.

The Greek green cross on a white ground and the Greek white cross on a green ground have both come to symbolize safety. Both marks are employed by the National Safety Council. The National Safety Council has a membership of approximately 6,000. The member-organizations are of the following character: industrial, commercial, public utility, transportation and insurance companies, municipal and state departments of public safety, local safety councils, chambers of commerce, automobile clubs,

---

[36] Hearings Before the Committee on Foreign Affairs, House of Representatives. 77th Cong., 2d Sess., on H. R. 6911, pp. 264-265.

[37] *The Story of the Blue Cross*, by Louis H. Pink, Public Affairs Pamphlet No. 101, 1945, p. 4; *Blue Cross Plan*, 2nd War Conference, Reports and Discussions, Hospital Service Plan Commission, American Hospital Association, 1943, p. 5.

schools, libraries, and miscellaneous civic organizations.[38] It is not unlikely that one or both of these symbols of the Greek white cross on green ground and the Greek green cross on white ground will attain such recognition as the emblem of safety or of the National Safety Council as to make trade-mark usage deceptive to the same extent as present use of the red cross as a trade-mark. The Greek green cross on white ground is the trade-mark of the country's largest wholesale distributor of general retail package merchandise.

The Greek white cross on a red ground is the national emblem of Switzerland. In 1936 Congress passed an act[39] prohibiting further adoption of this emblem as a trade-mark, with "equitable reservation of the rights of persons or corporations who had lawfully adopted and legitimately used" the emblem prior to passage of the act.[40] This legislation was intended to parallel, under the provisions of the Geneva Convention of 1929, the prohibitions against the commercial use of the symbol of a red cross on a white ground. The white cross on a red ground is the recognized trade-mark of a manufacturer of surgical dressings that are distributed nationally. To some uninformed persons, "the careless, ignorant, illiterate," this trade-mark may suggest connection with the Swiss Government.

CONCLUSION

There is no evidence in the record to support the vital finding of the Commission "that the use of a red cross in the particular form and coloration here involved—a Greek red cross on a white ground—had its origin in the Geneva Convention of 1864." The present brief cites conclusive evidence to the contrary.

---

[38] Social Work Yearbook, 1945, published by Russel Sage Foundation, N. Y., p. 570.

[39] Title 22, U. S. C. A. Section 248; 49 Stat. 1557.

[40] See Hearings Before the Committee on Foreign Affairs, House of Representatives, 77th Cong., 2d, on H. R. 6911, pp. 414, 416.

Neither has the Commission cited any case wherein a mark or symbol not *per se* deceptive, adopted and used in good faith and without collateral deceptive acts, has been suppressed because of a secondary meaning attaching to the mark or symbol as a result of a *subsequent* public, quasi-public, or private dominant use.

The decision of the Circuit Court of Appeals represents the fair solution of the difficulties that prompted issuance of the Commission's complaint. It is in harmony with the tradition of related trade-mark decisions. If the decision of the Circuit Court of Appeals were reversed and the order of the Commission sustained, the fundamentals of trade-mark law would be uprooted: a trade-mark owner would be left in fear of extinguishment of his property at any time that the Commission might find that some other public, quasi-public, or private organization, for whatever reason, had become dominant.

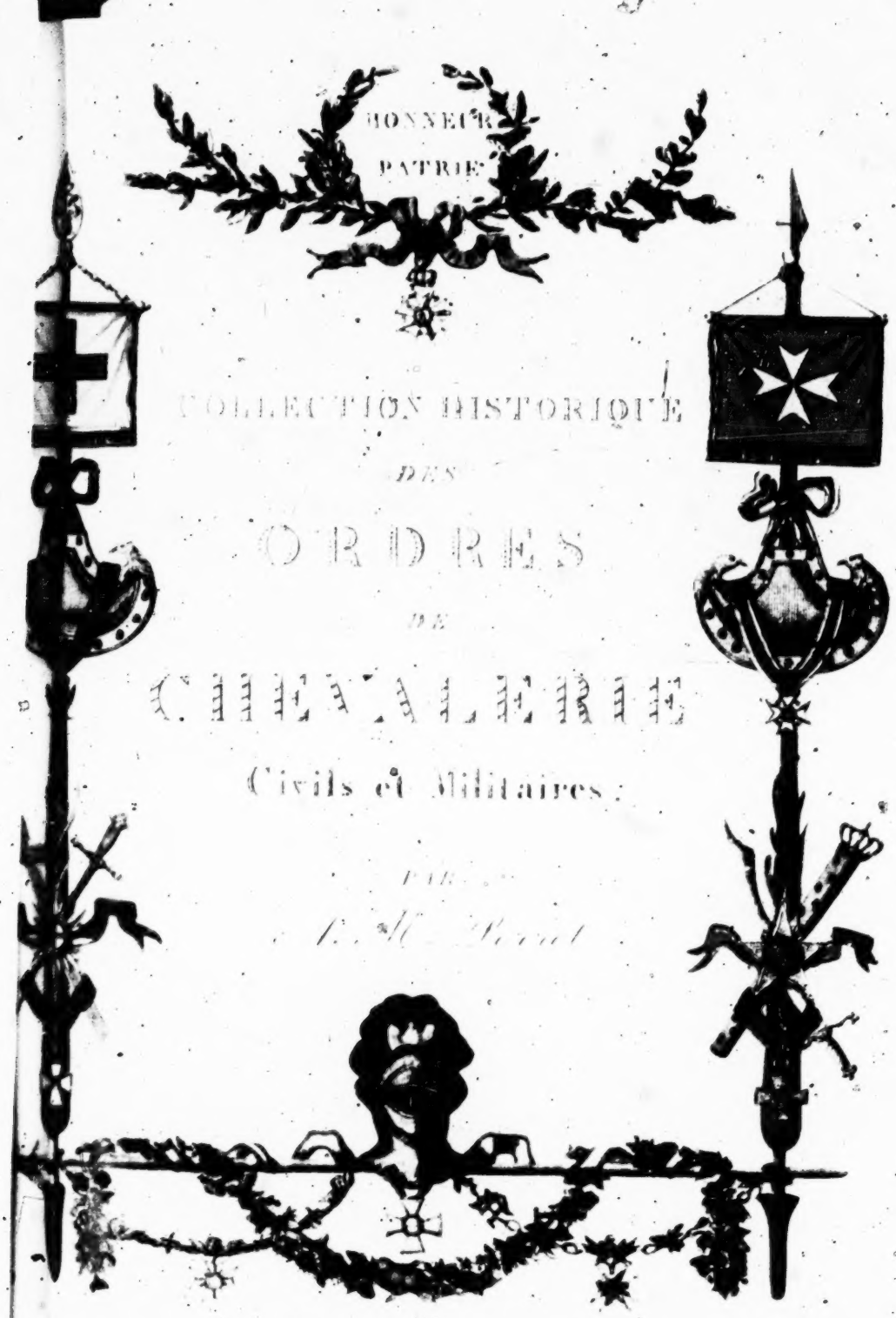
The judgment of the Circuit Court of Appeals should be affirmed.

Respectfully submitted,

KENNETH PERRY,
Attorney for Johnson & Johnson.

HECTOR M. HOLMES,
of Counsel.

Dated: New Brunswick, N. J.
December 27, 1945



COLLECTION HISTORIQUE

DES

ORDRES

DE

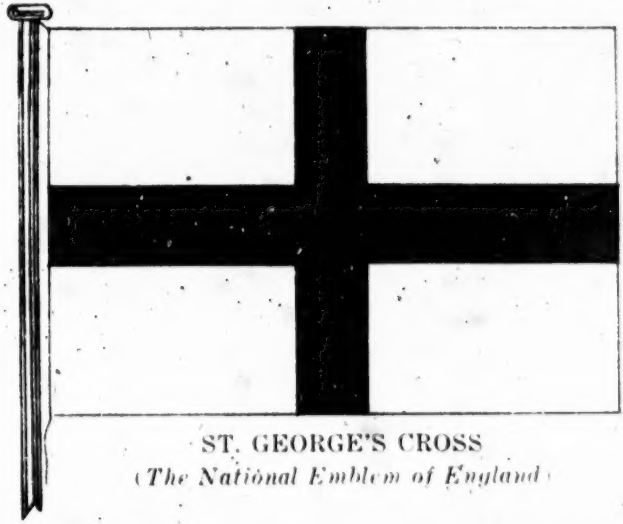
CHEVALERIE

Civils et Militaires;

PAR

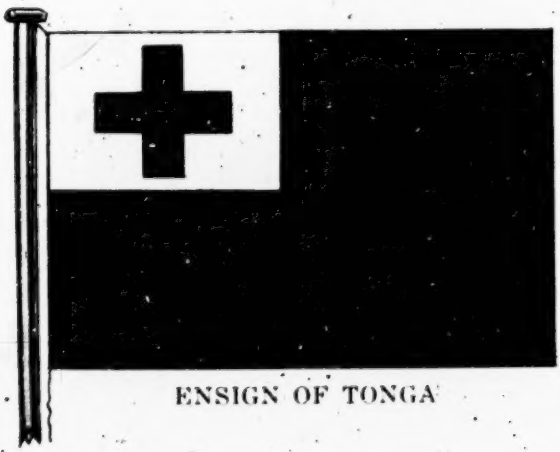
L. M. Perrot

Frontispiece of *Historical Collection of the Orders of Knighthood* by A.-M. Perrot, published by Aimé André, Paris, 1820



ST. GEORGE'S CROSS
(The National Emblem of England)

Reproduced from *Flags of All Nations*, printed for His Majesty's Stationery Office, London, 1907, by authority of the Admiralty. P. 4 illustrations of British Empire.



ENSIGN OF TONGA

Op. cit., supra, p. 12 illustrations of British Empire. This illustrates "the dumpy St. George's Cross" (*Flags of the World* by W. J. Gordon, published by Frederick Warne & Co., London, 1915, pp. 103, 110) adopted as early as 1869 and made perpetual by the Constitution in 1875. (*A History and Geography of Tonga* by A. H. Wood, printed by C. S. Summers, Government Printer, by authority, Nuku 'Alofa, Tonga, 1932, p. 58).

…*bs. rare*.
…*Hen. VIII*, XIV. i. 68
…ter fall of the said Red
…land should by another
…V. Barlow] *Answ. Name-*
…White-liverd Red-cap.
Obs. rare —¹.
…Dec. 11/2 Red-Cap, [or]
…resembles a Tea-Spoon;

…any birds..seem to have
…rkshire]. Woodpeckers
…finches, red-caps. [1795
…ar Dick Redcap, what
…6 The red-cap, hanging
…ennyson *Gardener's D.*
…nightingale Sang loud.
…nc., Shropsh., etc.).

…*l.* 25 The farmers call it

…z a red cap; capped

…Pl. 17 The Red-capped
…r every part of the sea-
…ited. 1865 — *Handbk.*
…Robin of the Colonists.
…ped Parrot (*Pionopsitta*
…*Moths* I. 64 Sailors in

…rican evergreen tree,
…ood of which is exten-
…he toon-tree or Moul-
…An Australian timber-

…Cedar. An Evergreen,
…33 *Planting* 122 in *Lib.*
…ed cedar..attains to the
…loam soils. 1843 Holt-
…of *Juniperus virginiana*
…In New South Wales the
…t of *Flindersia australis*,
…-tree, or *Cedrela Toona*.

some make a sauce of redco for sodden meat. 1597 Gerarde *Herbal* II. vii. § 2. 187 Horse Radish..is called in the north part of England red-cole. 1673 *Wedderburn's Voc.* 18 (Jam.) *Raphanus rusticanus*, red-col.

Red-collared, -coloured, -combed, -crested: see Red *a.* 14 a, 14 b.

Red cross, red-cross.

1. A cross of a red colour; *esp.* **a.** as the national emblem of England; St. George's Cross.

c 1430 *Agincourt* 89 in Hazl. *E. P. P.* II. 96 On euery panes a crosse rede, .. Saynt Georges stremers sprede ouer hede. *a* 1578 Lindesay (Pitscottie) *Chron. Scot.* (S. T. S.) II. 29 The Scottis..war all faine .. to tak on the reid crose and to be sworne as natiue subiectis of the king of Ingland. 1601 J. Wheeler, *Treat. Comm.* 30 Wearing the red Crosse or Cognizance of England. 1652 Evelyn *Diary* 6 Mar., Heraulds carrying the armes of the State (as they cal'd it), namely, the red crosse and Ireland. 1805 Scott *Last Minstr.* I. vi, To see St. George's red cross streaming. 1838 Haliburton *Clockm.* Ser. II. i, On fresh or on salt water,..down comes the red cross and up go the stars.

b. as the mark made on the doors of infected houses during the London plagues of the 17th century.

1636 *Direct. Cure Plague* H 2 b, That euery house visited be marked with a Red Crosse of a foot long, in the middle of the doore. 1654 Whitlock *Zootomia* 529 A Door,.. and a red Crosse on it would..effectually bring a licentious Gallant out of conceit with a Brothell-house. 1664 Killigrew *Parson's Wedding* IV. iii, Let us not forget ourselves in our grief; I am not ambitious of a Red Cross upon the door. 1665 *Orders Ld. Mayor & Aldermen City Lond.* B. 2 [as in quot. 1636 above].

c. as the badge of an ambulance service (see 2 c); the Geneva cross (see Geneva ²).

1863 *Resolutions*, etc. *Conf. Geneva* § 8 They shall wear round the arm..a white band with a red cross upon it. 1891 Hulme *Heraldry* (1897) 269 The doctors, nurses, and assistants have a white armlet with the red cross, the sacred badge that proclaims their errand of mercy.

2. *transf.* †**a.** An English ship. *Obs.*—¹

1622 Capt. Smith *New-Eng. Trials* Wks. (Arb.) 262 More afraid..then the smallest red crosse [that] crosses the seas would be..of any French Piccaroun [etc.].

1. The act…
in order, etc.…
riddance, arran…
For other dialect…
c 1470 Henry *W*…
was brynt on brei…
15 Oct., Giffin to…
Inglismen to the se…
Anc. Sc. Poems (178…
Of all thair paks t…
vii. (1859) 236 T…
thorough redd.

2. That which…
rubbish, refuse.

1527–8 *Burgh Rec.*…
land of the townis..…
Charters (1859) p. …
thairof away, £11 15…
68, I just fan' a doo in…
umbld. Gloss. s.v., So…
from the bank top of a…
attrib. 1883 Gresl…
a spoil heap on the…
104 Downhill..swep…
for the building.

Redd, *sb.*² *Sc…*
raid, 9 read(d, …
separately or in…
the word also a…
rudd and *rude*,…
is far from clear.]

1. The spawn of…
redd-time, spawn…

1648 *Aberd. Reg.* (…
raid tyme fra all man…
1805 Andrew Scott…
friend, to meet you h…
sin' time o' redd. 18…
were lying on their red…

2. The nest mad…
which to spawn.

1844 *Zoologist* II. 505…
or spawning-ground. 1…

afraid..then the smallest red crosse [that] crosses the seas would be..of any French Piccaroun [etc.].

b. The Christian side in the Crusades.

1801 SCOTT *Fire-King* xxvi, The Red-cross wax'd faint, and the Crescent came on. *Ibid.* xxxvii, How the Red-cross it conquer'd, the Crescent it fell.

c. An ambulance or hospital service organized in accordance with the Geneva convention of 1864, and distinguished by a cross (see 1 c); a person attached to an ambulance or hospital of this kind.

1877 W. E. FORSTER in Reid *Life* (1888) II. iv. 169, I went down with Russian Red Crosses in the Austrian steamer. **1897** C. BIGHAM *With Turkish Army in Thessaly* xiv. 121 Detachments of the Red Cross, who worked efficiently and generously throughout.

3. *attrib.* **a.** (sense 1) as *red-cross ensign, flag, knight, power, rank, shield.*

1889 DOYLE *Micah Clarke* 23 He..had fought under the *red cross ensign against Frenchman, Don, Dutchman, and Moor. **1820** SOUTHEY *Portr. Bp. Heber*, All seas have seen thy *red-cross flag In war triumphantly display'd. **1590** SPENSER *F. Q.* I. vi. 38 The *Redcrosse knight was slain with Paynim knife. **1833** TENNYSON *Lady of Shalott* III. i, A red-cross knight for ever kneel'd To a lady in his shield. **1811** SCOTT *Don Roderick* III. ii, Till .. their own sea hath whelm'd yon *red-cross powers. **1777** T. WARTON *Poems* 64 When Arthur rang'd his *red-cross ranks On conscious Camlan's crimson'd banks. **1811** SCOTT *Don Roderick* II. lvi, Fast as they land the red-cross ranks unite. **1814** — *Ld. of Isles* VI. xxix, Alone, De Argentine Yet bears on high his *red-cross shield.

b. (sense 1 c or 2 c) as *Red Cross Association, hospital, man, Society.*

1873 C. A. GORDON *Lessons Hygiene* Introd., Societies and individuals connected with the Red Cross Associations. **1876** W. E. FORSTER in Reid *Life* (1888) II. iii. 124 The steamer was crowded with Russians, but many of them really Red Cross men, an ambulance from Kazan. **1878** *Temple Bar Mag.* LIV. 525 Women..who left their..home to work almost day and night in the rough barracks of the Red Cross hospitals.

So **Red-crossed** *a.*

1643 QUARLES *Emblems* V. xii, Tell me, my wishing soul, didst ever trie How fast the wings of red-crost faith can flie?

Red-crowned: see RED *a.* 14 b.

Red currant. **a.** The fruit of the *Ribes rubrum* (see CURRANT, sense 2) or the shrub itself. **b.** (See quot. 1808.)

FILE COPY

JAN 2 1946

IN THE

Supreme Court of the United States

OCTOBER TERM, 1945

No. 320

FEDERAL TRADE COMMISSION, PETITIONER

v.

A.P.W. PAPER COMPANY, INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR A.P.W. PAPER COMPANY, INC., RESPONDENT

EDWARD H. GREEN
E. H. SYKES
Attorneys for A. P. W. Paper Company, Inc.

SULLIVAN & CROMWELL
Of Counsel

INDEX

	PAGE
Questions Presented	1
Specification of Errors	3
Statement	4
Red Cross	5
Statutory History	8
Point I—The use by the respondent of the words and symbol "red cross" is expressly permitted by Congress, and the Commission is without jurisdiction to prevent such use	15
Point II—The order of the Circuit Court of Appeals was a proper exercise of its jurisdiction	34
Point III—The decision of the Court below was too favorable to the Commission	38
Conclusion	41

CITATIONS

Cases

Baltimore National Bank v. State Tax Commission, 297 U. S. 209	19
Caigan v. Pliblico Ioiitless Firebrick Co., 65 F. (2d) 849, cert. denied 290 U. S. 668	40
Charles of the Ritz Corporation v. Federal Trade Commission, 143 F. (2d) 676	39

PAGE

Connecticut Company v. *Federal Power Commission*, 324 U. S. 515 34

Federal Trade Commission v. *Algoma Lumber Company*, 291 U. S. 67 ..... 29, 30
Federal Trade Commission v. *Balme*, 23 F. (2d) 615 40
Federal Trade Commission v. *Royal Milling Company*, 288 U. S. 212 37
Federal Trade Commission v. *Standard Education Society*, 302 U. S. 112 ..... 38, 39, 40
Ford Motor Company v. *Labor Board*, 305 U. S. 364 38

Loonen v. *Deitsch*, 189 Fed. 487 ..... 8, 17
Louisiana v. *Mississippi*, 202 U. S. 1 20

McDonald v. *Commissioner*, 323 U. S. 57 19
McDonald v. *United States*, 279 U. S. 12 16

Pep Boys—Manny, Moe & Jack, Inc. v. *Federal Trade Com.*, 122 F. (2d) 158 40

Statutes:

Act of June 23, 1910, 36 Stat. 604, 36 U. S. C. A. 4 ..... 1, 2, 3, 4, 5, 8, 21, 22

American National Red Cross Act of January 5, 1905:

Sec. 4, 33 Stat. 600, 36 U. S. C. A. 4 ..... 1, 2, 3, 4, 5, 8, 17, 21, 22, 24

Federal Trade Commission Act of September 26, 1914, Sec. 5, 38 Stat. 719, as amended by the Act of March 21, 1938, 52 Stat. 111, 15 U. S. C. A. 45 ..... 1, 2, 3, 4, 5, 18, 19, 20, 24

Federal Trade Mark Act of July 8, 1870, 16 Stat. 210 7

PAGE

Congressional Material:

Cong. Rec. for January 19, 1944, pp. 387, *et seq.*... 13

Cong. Rec. for April 24, 1944, pp. 3633, *et seq.*..... 13

H. R. 6911, 77th Cong., 2d Sess..... 9

H. R. 7420, 77th Cong., 2d Sess..... 10

Hearings before the House Committee on Foreign Affairs on S. 469, 78th Cong., 2d Sess..... 5, 27

Hearings before the House Committee on Foreign Affairs on H. R. 6911, 77th Cong., 2d Sess..... 9

Hearings before the Senate Judiciary Committee on S. 2441 and H. R. 7420, 77th Cong., 2d Sess..... 11

House Reports:

2387, 77th Cong., 2d Sess..... 10, 11

2054, 78th Cong., 2d Sess..... 14

S. 2441, 77th Cong., 2d Sess..... 11

S. 1398, 78th Cong., 1st Sess..... 14, 25

S. 469, 78th Cong., 2d Sess..... 24

Senate Report:

534, 78th Cong., 1st Sess..... 12, 13, 23

Miscellaneous:

Barton, The Red Cross..... 7

Geneva Convention of August 22, 1864, with additional articles of October 20, 1868, proclaimed by the President as to the original convention, but with reserve as to the additional articles, July 26, 1882, 22 Stat. 940..... 6

Oxford English Dictionary..... 5

Red Cross Convention of 1929, 47 Stat. 2074..... 9

Webster, American Dictionary (1860 and prior eds.)..... 6

IN THE

Supreme Court of the United States

OCTOBER TERM, 1945

No. 320

FEDERAL TRADE COMMISSION, PETITIONER

v.

A.P.W. PAPER COMPANY, INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR A.P.W. PAPER COMPANY, INC., RESPONDENT

QUESTIONS PRESENTED

We must object to the Commission's statement of the questions presented, as it raises issues that do not exist.

The Commission states the question to be whether the Act of 1905, as amended in 1910, exempting the pre-1905 users of the words "Red Cross" and the sign of the Greek red cross "also exempts such prior users from the prohibitions of the Federal Trade Commission Act, as amended, even though a prior user is now found to be employing these words and symbol as an unfair and deceptive act or practice in interstate commerce".

The Court below did not so hold; on the contrary, it held the exact opposite. The opinion states:

> "Both principles may be recognized in the case at bar by holding that the Red Cross Act gives the petitioner the right to continue to use the Red Cross words and symbol but the Federal Trade Commission Act empowers the respondent to prevent their use in a deceptive manner."

The Court referred the case back to the Commission for further proceedings in accordance with the opinion, stating:

> "We do not ourselves attempt to formulate the new order because our recent decisions have held that the measure of the necessary relief is peculiarly within the competence of the Commission."

Obviously, if the Court had decided that the prior users were exempted from the prohibition of the Federal Trade Commission Act, it would have set aside the order of the Commission and dismissed the proceeding. The Commission had held in its findings and argued in the Court below that the amendment of 1938 to the Federal Trade Commission Act in effect repealed the proviso of the Red Cross Act of 1910; and that, in applying the amended Federal Trade Commission Act, it could completely ignore the Red Cross Act. The Court upheld the Commission in holding that it could proceed under the amended Federal Trade Commission Act but reversed the Commission in holding that the proviso of the Red Cross Act was repealed in effect and could therefore be completely disregarded. Hence, as the Commission had proceeded upon an erroneous construction of the law, the Court employed the practice, approved and followed by this Court, of remitting the case to the

Commission for further action in accordance with the opinion. The Commission made no attempt to proceed further to reconsider its findings or order in the light of the opinion, but at once applied to this Court for certiorari.

Specification of Errors

When it comes to specifying the errors that the Court below is alleged to have made, the Commission shifts its ground. Here it says that the Court erred in holding that the Red Cross Act gave a right of continuing use "which prevails against the specific prohibition by the Federal Trade Commission Act as amended", and that the Federal Trade Commission Act does not empower the Commission "to grant relief against such unfair or deceptive acts and practices by forbidding the use of the words 'Red Cross' and its symbol".

Thus the Commission first stated the issue to be whether a pre-1905 user is exempted from the operation of the Federal Trade Commission Act by virtue of the provisions of the Red Cross Act. Now it has reframed the question to be whether the Red Cross Act limits the quantum of relief to be given under the Federal Trade Commission Act to the extent of forbidding prohibition.

The reframed question has not arisen and may never arise. The Court below held:

> "two statutes dealing with related subject-matter should, if possible, be so construed as to give effect to both."

The Commission has never considered whether it could apply the Federal Trade Commission Act without absolute

and immediate prohibition, as it has proceeded only on the erroneous understanding of law that it could completely disregard any rights of the pre-1905 users under the Red Cross Act. If the Commission, upon taking further proceedings, finds that both Acts can be given effect, then the question set forth in the specification of errors will never arise. The question of the supremacy between the two statutes does not arise unless and until they have been found to be completely irreconcilable, i.e. that the Commission cannot perform its duties under the Federal Trade Commission Act without complete and immediate prohibition.

We do not believe that the Commission need so find but, if it should, it would be our position that Congress has given the pre-1905 users of the red cross words and symbol the right to continue the use until such time as Congress shall qualify or terminate such right; and that Congress has given the Federal Trade Commission power to prevent the misuse or abuse of that right, but not the power to terminate it, i.e., it has the power to regulate but not to terminate.

Statement

This case presents only the naked question of mere use of the red cross words and symbol, and no question of misuse or abuse. In view of the frequency with which the Commission's brief uses the general expression "deceptive acts and practices", it is important to note just what the respondent is charged with having done. There is no charge, there is no evidence and there is no finding that respondent did other than merely use the trade-mark that it adopted in 1897; and there is no suggestion that by any other act or deed on its part it did anything to induce anyone to believe

there was any connection between it or its products and the American National Red Cross. In fact, the respondent took certain steps to rebut any such belief, but the Commission found them to be insufficient (R. 47, fol. 141). The findings of the Commission went no further than to find a "tendency and capacity to mislead and deceive" (R. 49, fol. 146).

It appears that there now remains only a small handful of pre-1905 users of the red cross words and symbol, within the proviso of the Red Cross Act.[1] The Commission after starting this proceeding against respondent started similar proceedings against others of this group but these other cases have been held in abeyance, presumably awaiting the outcome of the present case. We presume that the selection of this respondent for the first case was made upon an alphabetical basis, as it is stated in the application for certiorari that the decision by this Court will govern the application of the Trade Commission Act to all pre-1905 users.

Red Cross*

The words "red cross" have been in common usage for centuries. The Oxford English Dictionary gives both "red cross" and "red-cross". The definition appears in the Record at pages 435 to 437, showing the use going back over the centuries and the first definition as the national emblem

---

[1] There is evidence in the Congressional hearings that the number is only six (Hearings before the House Committee on Foreign Affairs on S. 469, p. 60); but we understand the brief *amicus* being filed indicates that something under ten pre-1905 users are still using the mark.

*The facts on this matter are only summarized here, in view of the full treatment in the brief *amicus curiae*.

of England—St. George's cross. "Red cross" is also found in Webster's American Dictionary, in the 1860 and earlier editions.

The first Convention in Geneva was held in 1864 and was entitled a Convention "for the amelioration of the wounded in armies in the field". In it the words "red cross" appear but once. In Article VII there is this sentence: "The flag and the arm-badge shall bear a red cross on a white ground" (22 Stat. at Large 940, 944).

In the longer supplementary Convention of 1868, the words appear only twice, namely in Articles XII and XIII, which provide that hospital ships and ships claiming neutrality under the Convention shall, together with their national flag, have a "white flag with a red cross". It is also provided that "military hospital ships shall be distinguished by being painted white outside with green strake" (Ibid, p. 949).

It will be noted that neither Convention defined the cross to be used. Such specification did not appear until the next Convention, held in 1906, which provided for "the heraldic emblem of the red cross on a white ground, formed by the reversal of the federal colors", out of respect to Switzerland.

Of course the Greek cross is a symbol that antedated these Conventions by centuries. The Greek cross in red was used by the Republic of Genoa, by England, by the Knights Hospitalers and many others. By association of ideas it had been taken into usage with various connotations, especially with reference to mercy, aid to the sick and wounded, sanitation, purity and the like. The Geneva Conventions did not even purport to create or originate the words or the symbol, but went back to the common pool

and took therefrom the words and symbol that had long before obtained connotations appropriate to the purposes that these Conventions intended to further.

This country was not officially represented at the Conventions of 1864 and 1868, and it was not a party to them. They made so little impression in this country that the United States did not ratify them until eighteen years later —in 1882. Miss Clara Barton says in her own book that she herself did not hear of them until she went to Europe and did not start to make her first effort in this country on behalf of the Geneva Convention until 1877.[2] The so-called "Red Cross movement" was very slow in developing in this country. Respondent's Exhibit 10 (R. 440) is very illuminating. In 1905 the American National Red Cross had only 3,387 members.

There had been in this country a wide use of the red cross as well as other crosses as trade-marks for commercial purposes.[2a] This appears from Respondent's Exhibit 13 (R. 448, *et seq.*). As the first Federal Trade Mark Act was not passed until 1870, the record of registrations in the United States Patent Office, set forth in this Exhibit, could not go back of that date. Also, this list can indicate only part of the use, as it is well known that a large percentage of trade-marks in use were not registered in the Patent Office, especially in the earlier years. It is obvious that during these years business men were using crosses of all shapes and all colors as trade-marks. There is no evident trend to use the red cross and Greek crosses in preference to other colors and other shapes. Business went back into

---

[2] "The Red Cross" by Clara Barton, pp. 60-61, 63.

[2a] The red cross had long been used by the Hudson's Bay Company, East India Company and other famous trading companies.

the common pool for symbols and trade-marks, and naturally enough there is no evidence that it was influenced by the Geneva Conventions which were so slow in obtaining popular recognition in this country.

It is significant to note the statement made by Judge Learned Hand in 1911 in *Loonen* v. *Deitsch*, 189 Fed. 487, 489:

> "Does the mark (the red cross) actually mean that the society is in any way concerned with the manufacture of the goods? I think not. We have become familiar with it in the past for many other uses than that of the society though happily such uses will now slowly disappear. It has been used on hospital ambulances, upon medicaments, upon doctors' motor cars, upon barber shops, upon laundries and for military field service not connected with the Red Cross Society. In short, until the legislation of 1905, it had been quite instinctively adopted for many uses which were congruous with the chief objects of the society but which did not indicate that the society had anything to do with them, or certainly with the frequency of the use ceased to do so."

STATUTORY HISTORY

Congress incorporated the American National Red Cross in 1900, reincorporated it in 1905, with amendments in 1910, and provided for its use as an emblem and badge "a Greek red cross on a white ground". In view of the then-existing commercial usage, there was posed the usual problem of adjustment of public and private rights and equities and it was solved by the usual compromise of using the "grandfather clause".[2] In the interest of the

[2] The Act of 1900 contained no prohibition against commercial use. The prohibition and the "grandfather clause" appeared for the first time in the Act of reincorporation in 1905.

public it was desirable to prevent the confusion and possible deception that might follow if business men could put on their goods the same trade-mark as that of this newly-created organization, but on the other hand those who had properly used it over the years had equities that called for protection. The compromise made it unlawful thereafter to use the words or symbol "for the purposes of trade or as an advertisement to induce the sale of any article whatsoever"; that minimized the problem by eliminating further extensions of the use but maintained the *status quo* by also permitting the then lawful users to continue. The merit of such a compromise is that it carried within itself the potentialities of improvement as business mortality and the vicissitudes of time could be counted on steadily to reduce the pre-1905 users.

For three decades after 1910 all attempts to amend this legislation failed. At the beginning of this decade the expectation of mortality among the pre-1905 users proved to be justified; but on the other hand, the fame and membership of the American National Red Cross have grown tremendously. While the bills introduced in Congress in 1942 were originally under the guise of implementing our alleged obligations under the Geneva Convention of 1929, that aspect, although it loomed large at first, faded out under a critical scrutiny. The elaborate Congressional investigations ranged over a wide field.

The first bills were introduced in the House and the Senate. The House bill (H.R. 6911) was taken up for study and the House Committee had hearings during a period from April 14, 1942 to May 27, 1942 and took over four hundred pages of testimony.[3] It then rewrote the bill

[3]Hearings before the Committee on Foreign Affairs, House of Representatives, 77th Congress, 2d Session on H.R. 6911.

and reported it to the House as H.R. 7420, with a report favoring passage. This bill struck out the proviso in favor of pre-1905 users and it then proceeded to provide:

> "any person, corporation, or association that actually used or whose assignor actually used the Red Cross for any lawful purpose prior to January 5, 1905 * * * may continue to use the Red Cross * * * (1) until July 1, 1944 if such use by such person, corporation, or association would have been lawful prior to the date of the enactment of this act; and (2) during an additional period beginning July 1, 1944 and ending July 1, 1947 in the labeling of any article if" a new trade-mark was joined for the purpose of indicating that the article was formerly identified by the Red Cross.

The report[4] which accompanied this bill first gave the situation as it then existed. It stated:

> "Persons, corporations, or associations that actually used or whose assignors actually used the Red Cross insignia or words for any lawful purpose prior to January 5, 1905, however, *are expressly permitted to continue the use thereof* for the same purpose and for the same class of goods." (Emphasis supplied.)

In explaining the provisions of the bill, the report states:

> "The provisions of the present law which permit certain persons to continue to use the Red Cross emblem and words and the White Cross emblem, without limitation as to time, are eliminated by sections 1 and 2 of the bill. Section 3 of the bill is a temporary provision, and is for the purpose of permitting continued use of the Red Cross insignia or

[4]Report No. 2387, 77th Congress, 2d Session, House of Representatives.

words and the White Cross for specified periods of time.

"* * * The committee is of the opinion that continued use, and sales by manufacturers and producers, should be permitted only for a period of approximately 18 months after the proposed legislation becomes law."

This bill was not reached on the calendar before Congress adjourned at the end of 1942. However, in the meantime the Senate bill (S. 2441) was taken up by the Senate Committee, which proceeded to consider it at length beginning in 1942 and finally filed its report in the Senate on November 15, 1943. The history of the bill appeared at the beginning of the hearings in a statement by counsel for the American National Red Cross[5]:

"I desire at the outset to point out that when S. 2441 was introduced it was in a form which prohibited the commercial use of the Red Cross name and emblem after a period of one year from the date of the passage of the bill. That bill was prepared *by the Department of Justice*, sent to the State Department, submitted by the Under-Secretary of State to the President and sent by the President to Congress with his recommendation for its passage. During the hearings which took place before the House committee, various objections to the S. 2441 provisions were raised and due to various amendments which were offered and adopted by the committee, S. 2441 finally took the form of H.R. 7420, which last bill has had the unanimous approval of the House Committee on Foreign Affairs." (Emphasis supplied.)

---

[5]Hearings before a Subcommittee of the Committee on the Judiciary, Senate, 77th Congress, 2d Session on S. 2441 and H.R. 7420, p. 4.

The report[6] of the Senate Committee (of which Senator O'Mahoney was Chairman) stated:

> "It was recognized, however, that there have been good faith uses of the symbol. The bill as reported to the Senate therefore gives an opportunity for commercial users gradually to abandon the use by providing: first, that those who were lawfully entitled to the use of the Red Cross prior to the act of January 5, 1905 for commercial purposes might continue such use until July 1, 1947; second, that during an additional period of 3 years, namely to July 1, 1950, the words or the symbol could be used in advertising and labeling if the use was lawful prior to the date of the enactment of the act, after a new trade name, design or insignia, is used in the labeling and if such use is 'only of the words Red Cross and only for the purpose of indicating, in lettering smaller than the new trade name, design or insignia that such article formerly was identified by the Red Cross'; and that retailers may be permitted to deal in articles in the labeling of which the Red Cross is used until July 1, 1950." (p. 2)

The Committee summarized the bill (S. 469) which it favorably reported thus:

> "In other words the bill provides, in effect, first, three years' continued use of the symbol by manufacturers; second, three years additional in which to change to a new insignia; and, third, three years after 1947 for retailers to dispose of stocks." (p. 3)

The report concluded as follows:

> "It was the judgment of the committee that the protection of the public against possible deception into

---

[6]Report No. 534, 78th Congress, 1st Session, Senate.

> the belief that commodities which were being placed on the market by commercial operators were in fact the product of the American Red Cross Society or endorsed by the American Red Cross Society would warrant the passage of this legislation even if there were no treaty obligations at all." (p. 4)

This bill after a full debate[7] was passed by the Senate, the additional three-year period allowed to the pre-1905 users being increased to six years. After the vote was announced, a motion was made to reconsider, in order to permit of further study. The bill subsequently came up for reconsideration and there was an extended debate[8] on a proposed amendment that the pre-1905 users be permitted to file suit in the Court of Claims for compensation. The amendment was lost and the bill was passed, on a vote of 38 to 28.

This bill then went to the House. The House Committee then had further extensive hearings, during a period from May 23, 1944 to December 8, 1944, taking several hundred pages of testimony. The Committee then reported out the Senate bill favorably, after amending it so as to lengthen the periods for tapering off the use. The bill as so amended provides as follows: (1) continued use of the symbol until July 1, 1950, (2) use until July 1, 1963 in advertising and labeling if a new trade-name is used in such labeling and if the use is only of the words "Red Cross" in lettering smaller than the new trade name for indicating that such article was formerly identified by the

---

[7]Congressional Record for Jan. 19, 1944, pp. 387, *et seq.*

[8]Congressional Record for April 24, 1944, pp. 3633, *et seq.*

Red Cross. The Committee report[9] started with a statement of the existing law:

> "Persons, corporations or associations that actually used or whose assignors actually used the Red Cross insignia or words for any lawful purpose prior to January 5, 1905, however, are expressly permitted to continue the use thereof for the same purpose and for the same class of goods. * * *
>
> "It was recognized, however, that under existing law there are legal uses of the symbol by commercial users. The bill as reported therefore gives an opportunity for commercial users gradually to abandon the use of the symbol and name by providing: first, that those who were lawfully entitled to the use of the Red Cross prior to the act of January 5, 1905 for commercial purposes might continue such use until July 1, 1950, and that the manufacturer or producer may have until July 1, 1951 and the retailer until July 1, 1954 to dispose of such articles; second, that during an additional period of 13 years, namely to July 1, 1963, etc. as stated above.

The House adjourned at the end of 1944 before the bill was reached on the calendar.

In the course of the last Committee hearing (pp. 124-125) the fact appeared that a bill (S. 1398) had been introduced[10] in the Senate on September 29, 1943 amending the Red Cross Act to narrow the use by pre-1905 users, and containing the following provision:

"The Federal Trade Commission is authorized and

---

[9]Report No. 2054, 78th Congress, 2d Session, House of Representatives.

[10]Representative Johnson thought the bill had passed the Senate, but investigation shows it has not been acted upon.

directed to enjoin violations of this Act subject to the same procedure, appeals, and penalties as now provided in the case of deceptive acts or practices in 'commerce' by Fifty-second Statutes at Large, 11. (15 U.S.C. 45)."

POINT I.

THE USE BY THE RESPONDENT OF THE WORDS AND SYMBOL "RED CROSS" IS EXPRESSLY PERMITTED BY CONGRESS, AND THE COMMISSION IS WITHOUT JURISDICTION TO PREVENT SUCH USE.

We are confronted with a question of construction. The Commission does not have the power asserted in this proceeding unless Congress gave it to the Commission. Clearly, Congress could have authorized the respondent to use the red cross words and symbol and refrained from giving the Commission power to prevent such use, or Congress could have given the Commission the asserted power to prevent the use.

We submit that the foregoing facts clearly demonstrate (1) that Congress has retained jurisdiction over dealing with the use of the red cross; (2) that Congress regards the pre-1905 users as having the right still to do so; and (3) that it has refused and still refuses to terminate forthwith and unconditionally the rights of the pre-1905 users.

Three Congressional Committees have just recently labored at length over the problem; they have heard proponents and opponents of the legislation at length; they have had before them representatives of various departments of the Government (including the Department of Justice); and they invited all interested persons to appear. They have considered history, equities and present conditions. Then they arrived at the conclusions set forth in their bills and

accompanying reports. It is apparent that the one thing that Congress will not authorize is the action that the Federal Trade Commission purported to take in this proceeding. If the rights of the pre-1905 users are to be ended, they are to be given a period of time to prepare for it, a further period in which to transfer the good will of their present trade-mark to a new trade-mark, and the rights of dealers must be protected. The position of Congress seems crystal clear—it made an adjustment of conflicting interests in 1910, giving the pre-1905 users the right to continue their use of the words and symbol, and that adjustment continues unless and until Congress changes it; and when Congress makes a new adjustment, it will do so by comprehensive legislation that will take into account the equities of the various rights involved.[11] The conclusion is inevitable that Congress has not given the Commission the power of annihilation it has sought to exercise.

As against this, the Commission advances various arguments which we will proceed to analyze.

A.

First, the Commission suggests that the pre-1905 users did not acquire any rights under the Red Cross Act because the language in question is in the form of a proviso. But as was said by this Court in *McDonald* v. *U. S.*, 279 U. S. 12, 21:

> "Little if any significance is to be given to the use of the word 'provided'. In Acts of Congress, that word is employed for many purposes."

---

[11] It will be noted from the Congressional proceedings that, the longer the Congressional Committees studied the problem, the longer they would continue the use by the pre-1905 users and the more generous were the conditions for tapering off.

It is well settled by this Court that in construing Federal legislation the intent of the whole must be determined, and no weight is to be attached to the fact that the clause in question appears as a proviso.

Moreover, the Commission has overlooked the fact that in the codification of the Federal statutes in the United States Code, the word "provided" has been dropped out, as well as the words "by this Act", so that the statute now reads:

> "No person, corporation, or association that actually used or whose assignor actually used the said emblem, sign, insignia, or words for any lawful purpose prior to January 5, 1905, shall be deemed forbidden to continue the use thereof for the same purpose and for the same class of goods." (U. S. C. A., Tit. 36, § 4)

So, until this is repealed or amended, no pre-1905 user "shall be deemed forbidden to continue the use".

Aside from the language employed, Congress itself, the author of the legislation, has placed the matter beyond dispute. The Committee reports all affirmatively assert that the pre-1905 users "are expressly permitted to continue the use". The proposed amendatory statutes uniformly provide "may continue to use". Congress has thus given the authoritative and obvious construction of its own action; it prohibited the commercial use of the words and symbol, except that it authorized the then users to continue their use. Thus Congress has no doubt today that pre-1905 users were authorized and are still authorized to use the words and symbol.

Shortly after the passage of the Red Cross Act, Judge Learned Hand in *Loonen* v. *Deitsch*, 189 Fed. 487 (1911) ruled:

> "Finally, Congress has clearly recognized that fact by permitting all those who prior to 1905 had used the mark lawfully, to continue. * * *.
>
> "* * * Whatever may have been the policy before, Congress has now definitely declared in the proviso of the latter act that it would permit such marks if they antedated 1905. Congress had power so to legalize the use of it; the question of public policy was for it and for it alone, and it is now finally closed."

That opinion has not been attacked or questioned until now and has been generally regarded as authoritative.

B.

We now come to what is apparently the Commission's main argument. It claims that the amendment of 1938 to the Federal Trade Commission Act overrides the proviso of the Red Cross Act. That amendment authorizes the Commission to prevent the use of "unfair or deceptive acts or practices in commerce".

We must first analyze the issue presented. The only "deceptive act" relied on is the mere use of the red cross words and symbol. The Commission complains of no other act or practice as being deceptive except the mere naked use. Hence the Commission's claim is the right of prohibition even if there is nothing but mere use. The Commission's claim is thus not the right to regulate or the right to forbid any act or practice other than mere naked use, but the right to destroy the use peremptorily, for that is all that is involved in this case.

The Court below upheld, and this respondent does not question, the right of the Commission to regulate under the

Federal Trade Commission Act. If any pre-1905 user in connection with his use of the words and symbol is guilty of any unfair or deceptive acts or practices, the Commission has full power to stop such acts and practices. The Court below went even further and held that the Commission could affirmatively order pre-1905 users to take affirmative action in connection with the use, and the respondent has not appealed therefrom. The two Acts should and can be construed together so that both can be given effect. But the Commission will have none of that; its position that it can prevent the mere use is in reality the claim that the amendment of 1938 repeals the proviso in the Red Cross Act, and it should be completely disregarded by the Commission.

We start with the basic principle as stated by Mr. Justice Cardozo in *Baltimore National Bank* v. *State Tax Commission*, 297 U. S. 209, 215:

> "It is a well-settled principle of construction that specific terms covering the given subject matter will prevail over general language of the same or another statute which might otherwise prove controlling."

It is also pertinent here to quote from the recent case of *McDonald* v. *Commissioner*, 323 U. S. 57, 62, in which the petitioner was advancing a similar argument in another branch of the law:

> "Nothing whatever in the circumstances attending the adoption of §121 of the Revenue Act of 1942 warrants the suggestion that Congress unwittingly initiated a radical change of policy regarding campaign expenditures. * * * It surely is not fair to attribute to Congress the reversal of its policy and the enactment of a far-reaching new policy in the absence of any evidence, however tenuous or specu-

lative, that Congress was legislating on the subject."

No suggestion has been advanced that Congress in amending the Federal Trade Commission Act of 1938 had in mind the Red Cross Act or a reversal of the policy as set forth in that Act.[11a]

The Commission undertakes to avoid these principles by claiming that the two statutes are not in "*pari materia*". But there is no such exception to the general principle; the Commission cites no authority therefor and there is no basis in the reasons underlying the principle for any such exception.[11b]

The Commission's real point is that when Congress passed the Red Cross Act and when Congress recently was considering its amendment, Congress was not thinking of the public interest or the protection of consumers, and that Congress dealt with that matter solely in the 1938 amendment of the Federal Trade Commission Act.

It is certainly a remarkable assumption we are asked to make, that Congress in legislating and fixing a public policy was blind to the public interest. The Commission presents not a shred of evidence to support that assumption and such an assumption cannot be indulged in without strong evi-

---

[11a] Admittedly the object of the amendment of 1938 was to change the construction put on the Trade Commission Act by the courts. The courts had held that injury to competitors was a necessary condition to the Commission's action and Congress removed that condition.

[11b] To the contrary see *Louisiana* v. *Mississippi*, 202 U. S. 1, 41. This Court, after finding that the acts admitting Louisiana, Mississippi and Alabama, respectively, were not in *pari materia*, held that a claimant under the last act could not "successfully contend that it changed the earlier act by construction".

dence to support it. But we do not need to rest there; from the language used, as well as from the inherent nature of the problem posed and the solution enacted, it is apparent that the assumption is without foundation.

When Congress incorporated the Society there was a wide use of various crosses in various colors for many purposes. Congress put the words "red cross" into the corporate name of the Society that it was incorporating and provided that its emblem should be a Greek red cross on a white ground. If it had stopped there, there would have been potentialities of real confusion, for the public might deal with persons or buy merchandise using these words and symbol in the mistaken belief that a connection existed with the Red Cross Society. Congress admittedly incorporated the Society, giving it this particular name and this particular emblem in view of the Geneva Conventions and to further its purposes. But there is no justification for the claim that Congress stopped there; Congress could not possibly have been unaware of the wider problem of consumer misunderstanding arising from its selection of words and a symbol that were so commonly used as trade-marks. The language of the Act shows that this is so and dispels any doubt to the contrary.

In Section 4 of the Act of 1905 Congress first made it unlawful for a person falsely to hold himself out as being a member or agent of the Society for the purpose of collecting funds. Then it went on in the next sentence to prohibit the use for the purposes of trade

> "or as an advertisement to induce the sale of any article whatsoever."

In the amendment of 1910 the wording of this section was strengthened but the above-quoted language remained

unchanged.[12] It continued the prohibition against the use for the purposes of trade "or as an advertisement to induce the sale of any article whatsoever". Clearly Congress had in mind that persons might use the words and symbol "to induce the sale of an article" and that the consumer might be misled thereby. Hence the need arose for the adjustment of conflicting interests. Congress might have followed public interest to the complete exclusion of private interests but, in view of the equities of prior users, it adopted the compromise of the "grandfather clause." It was a fair adjustment under the circumstances, that had the virtue from the public interest standpoint of improvement through the certainty that the number of the pre-1905 users would steadily decrease over the years.

The Commission recognizing that the recent proceedings in Congress refuted its argument, attempted to brush aside those proceedings by asserting that Congress was then also not thinking about the consumer but only about the Red Cross Society. It would be remarkable to assume that Congress, having thought so much of the consumer in 1938 that it amended the Federal Trade Commission Act, then proceeded to forget all about the consumer. The record before the Congressional Committees contains abundant material showing that this aspect of the problem was actively before the Committees. Instead of burdening this Court with many references, we need merely quote from the report of the Senate Committee:

---

[12]It is further significant that while Section 4 as adopted in 1905 provided, "The fine so collected shall be paid to the American National Red Cross", that provision was wholly eliminated from the 1910 amendment, so that now the violation is a misdemeanor punishable in the Federal courts like any other misdemeanor.

> "It was the judgment of the Committee that the protection of the public against possible deception into the belief that commodities which were being placed on the market by commercial operators were in fact the product of the American Red Cross Society or endorsed by the American Red Cross Society would warrant the passage of this legislation even if there were no treaty obligations at all."

It is noteworthy, particularly in the light of the foregoing, that the bill which accompanied the report authorized the continued use for three years by manufacturers and a further three years for use in connection with a new insignia and three years more to retailers to dispose of their stocks. The Senate increased the second period to six years, and when the bill got to the House, these periods for continued use and for tapering off were even lengthened. Although the Congressional Committees clearly had before them the possibility of deception of consumers, they asserted that the pre-1905 users are "expressly authorized to continue the use of the words and symbol" and proposed to continue that use for some years, with the right of a further limited use to transfer the good will to a new trade mark.

Approaching the matter from another angle, it seems remarkable that during the three years that the proposed amendatory legislation was pending before the Congressional Committees, where the proceedings were wide open to any witnesses and where various Government departments appeared, no one ever suggested that Congress was wasting its time and effort in considering the problem of the repeal or modification of the proviso, since Congress had already virtually repealed it four years before by authorizing the Commission to stop the use of the words

and symbol completely and peremptorily. If the Commission is correct, what an incredible mess Congress was heading into; unwittingly and unwarned it was authorizing the continuance of the use for years, with elaborate provisions for tapering off, when it had already authorized the Commission to terminate the use forthwith. If S. 469 is enacted, must not the Commission consistently claim that it and the Federal Trade Commission Act are not in *pari materia* and hence that it could disregard the later amendment to the Red Cross Act just as it seeks to disregard the original Act? Would the able lawyers in the United States Senate have engaged in extended debate on the propriety of an amendment allowing claims for compensation by the pre-1905 users, if there had been any question or suggestion that these pre-1905 users were employing their trade marks only on the sufferance of the Federal Trade Commission which had been authorized to terminate the use peremptorily? Also, it may be noted that the bill which originated the Congressional proceedings in 1942 looking to the modification or repeal of the proviso was drawn by the Department of Justice.

Of course the Federal Trade Commission was mentioned in the Congressional proceedings, but the way that it was, substantiates our position. We take as typical the excerpt quoted in the brief of the Commission at page 20:

> "The elimination of abuses is within the jurisdiction of the Federal Trade Commission."

That undoubtedly represented the view of the Congressional Committees, just as it accorded with the decision of the Court below. But elimination of abuse is very different from complete prohibition of use. The point was

made before the Committee that if the pre-1905 users abused their right of use, then the Commission could stop such abuse. But it was never even remotely intimated that the Commission had been authorized by Congress to stop the mere use; if such a suggestion had been made, the Committee would unquestionably have asked "Then why are we wasting our time in considering this legislation?"

At another point in the hearings, one of the Committee members suggested that Congress might lay down a principle that the Federal Trade Commission could apply in accordance with the legislative intent. It was then that another member of the Committee pointed out that Senator Barbour had introduced a bill to that effect (S. 1308).[13] These instances and others illustrate that the Congressional Committees were mindful of the Federal Trade Commission but did not regard it as having jurisdiction to solve the problem with which they were wrestling. The statutory provision that the pre-1905 users shall not "be deemed forbidden to continue the use" is regarded by Congress as still in full force and effect, and that is irreconcilably in conflict with the Commission's claim that Congress has authorized it to discontinue the use.

C.

The Commission brings into the case the Geneva Conventions in two ways: first, that the decree of the Commission should be sustained as carrying out the obligations of

[13]See p. 14 *supra*. It will be noted that the portion of this bill quoted to the Committee refers not only to the Federal Trade Commission, but also the "deceptive acts or practices" provisions of the Federal Trade Commission Act.

this country under the Conventions and, second, that Congress in its recent activities probably only had in mind the carrying out of these obligations.

The Convention of 1929 contains the language "the Governments of the High Contracting Parties whose legislation may not now be adequate shall take or shall recommend to their legislatures such measures as may be necessary at all times" to prevent commercial use. To this has been added the provision: "After such going into effect it shall be unlawful *to take out* a trademark or commercial label contrary to such prohibitions". (Emphasis supplied.)

These provisions are obviously not self-executory and it is unnecessary to cite authority to the effect that the implementing of such provisions lies with the Congress and is wholly without the competence of the Federal Trade Commission or any other like body. It is in the sole jurisdiction of Congress to determine what, if any, legislation should be enacted under such a provision, and the action or non-action on the part of Congress is conclusive on the courts, governmental agencies and all other departments of the Government.

There is no doubt that this country's alleged obligation to take some further action under these Conventions was one of the strong reasons originally urged in support of the legislation introduced in 1942 and the bill was cast in such a form that it went to the House Committee on Foreign Affairs. But as the hearings on that point developed it became less and less clear that this country was under any obligation to take further action and that ground finally faded out. In fact, Mr. Bloom, Chairman of the Committee, published a careful, detailed and documented statement, in which he pointed out that the legislation already adopted

by this country had discharged its obligations under the Conventions.[14]

This elimination of the treaty-motif is evidenced in several ways. First, the Convention had similar obligations with respect to the Swiss White Cross as it did with the Greek Red Cross, and the first bills in the House dealt with both crosses. But as the consideration of the legislation progressed, all reference to the White Cross was dropped out, until finally the legislation that was approved by the House Committee in 1944 makes no reference to it. If this legislation was in performance of this country's obligation under the Convention, there would have been no basis for dropping out reference to the Swiss White Cross. Second, the early bill's title was "an Act to implement article 28 of the convention signed at Geneva on July 27, 1929", etc., while the final bill—the one reported to the House on December 11, 1944—amends the title so as to read "An Act to terminate further commercial use of the heraldic emblem of the Red Cross on a white ground formed by the reversal of the federal colors of Switzerland and of the names 'Red Cross' and 'Geneva Cross' as referred to in articles 19 and 28 of the Geneva Convention of 1929". The purpose of implementing the Convention has disappeared.

As we have already shown, these extended hearings before the different Congressional Committees and on the floor of the Senate ranged over all aspects of the problem, and the Committees were far from being unmindful of protecting the consuming public from the potentiality of deception. We need merely conclude with a reference to the quotation from Senator O'Mahoney's committee's report on

[14]Printed at pp. 221 and 222 of the Committee hearings (1944).

page 12, *supra*, that it would favor the bill without regard to the Treaty.

D.

The Commission seeks support from the argument that the Red Cross Act applies to both interstate and intrastate commerce, while the Federal Trade Commission Act applies only to interstate commerce. The Commission apparently argues that Congress gave it the right to prohibit the use only in interstate commerce, leaving untouched the right to use in intrastate commerce. The result of that argument would be that Congress has divided the pre-1905 users into two classes; those pre-1905 users that employ the trade-mark in intrastate commerce can continue but those that employ it in interstate commerce can be stopped. On what possible theory Congress would make such a distinction is not suggested, and none appears. If Congress in 1938 deemed it necessary to withdraw the authorization given to the pre-1905 users in order to protect the consumer against deception, there seems to be no conceivable reason why the consumer needed to be protected only from an interstate user and not from an intrastate user. It is inexplicable that Congress should have intended indirectly by the amendment to the Federal Trade Commission Act to have repealed the proviso of the Red Cross Act as to interstate uses and left it intact as to intrastate uses.

The facts as developed before the Congressional Committees indicate that there is only a small handful of pre-1905 users still left. But these few survivors, whose existence was called to the attention of the Congressional Committee, are all engaged in interstate commerce. Thus

the question before Congress was what to do about the pre-1905 users who are engaged in interstate commerce, and the obvious understanding of Congress and of everyone else concerned was that these interstate users still continued to have the right to use unless and until Congress took action.

E.

The Commission refers to the case of *Federal Trade Commission* v. *Algoma Lumber Company*, 291 U.S. 67. That decision and its principles have nothing to do with the case at bar. In that case, the respondent companies falsely called their product "white pine" when it was not white pine. The Commission found that they had misnamed their product from the outset and had continued to use this deceptive description, and this Court sustained an order of the Commission directing the respondents to stop calling their lumber white pine when it was not white pine.

The respondent in the case at bar did not adopt a false trade-mark. At a time when crosses of all shapes and colors were still in the common pool for all to use, this respondent in good faith, as did many others, selected for its trade-mark a Greek cross colored red. Eight years later Congress incorporated the Society, put "red cross" into its title and gave it the Greek red cross as a symbol. But even then Congress told the respondent and others similarly placed that they could continue on their way, and they proceeded with the building up of good will and value around their trade-marks. Then over the years the American Red Cross Society, which had been little known and had few members, gradually grew until it had attained a large membership and wide reputation. The situation which the Commission says produces the potentiality of misconception was not created

by this respondent but was caused entirely by the growth of the American Red Cross Society. The trouble that the Commission finds with the situation was not caused by the respondent but was caused by the tremendous growth of a later comer into the field. Congress may feel that a readjustment between public and private rights has become desirable, and when Congress acts it will of course be obeyed. But in the meanwhile Congress' study of the situation has obviously satisfied it that the pre-1905 users have strong equities; that they are not in the class of deceptive business men but they are entitled to careful and considerate treatment.

In the *Algoma* case and like cases cited in Commission's brief, the company was found guilty of having committed the wrong of adopting a false trade-mark or having falsely advertised or branded its goods. This respondent has been found guilty of no wrong, upon analysis of the charges against it. The Commission carefully refrained from finding any impropriety in its original adoption of its trade-mark in 1897, and no such finding would have been justified by the evidence. All it is actually accused of is that it has continued to use a trade-mark properly adopted nearly fifty years ago, with the permission of Congress to continue to use it despite the incorporation of the American Red Cross Society with the Greek red cross as its emblem.

The Committees of Congress have referred to the pre-1905 users as being in "good faith" and said that their use was expressly permitted; and these Committees have consequently spent much time and care to protect the equities of these pre-1905 users. Surely they are not to be lumped for common treatment with those who falsely designate their wares.

Companies which have used the "Red Star" as a trade-mark for years may presently find that their situation is akin to that of this respondent when intercourse and trade with Russia grow to a point where the Russian Red Star is well known in this country; surely some people will be found who will testify that they thought that the Red Star on goods indicated some connection with Russia. Any possible confusion that would arise would in no way be due to those companies, any more than any confusion is due to this respondent. For the Commission to take away their trade-marks or to take away ours is certainly far beyond any principle of law that has yet been recognized. Congress may see fit to deal with their situation in the public interest just as it may see fit to deal with this respondent's. In the meantime the Commission may in these situations take steps to regulate the use, but may not destroy the trade-marks. The courts have recognized that a man by the name of Waterman may go into the fountain pen business, despite the prominence of the Waterman Company, or a man may make and sell cellophane, despite the prominence of duPont & Company, so long as he makes it clear that he is not connected with those companies. Respondent's situation is even stronger, for it adopted its trade-mark not only before the American Red Cross Society attained its prominence but even before the Society was incorporated.

F.

The Commission presents the argument that, if respondent had used some other words or symbol deceptively, the order of the Commission would have been proper. But the argument gets nowhere, as it means too much or too little.

If it refers to a company that adopts a false or deceptive trade-mark or symbol or misbrands or falsely advertises its goods, then a Commission order to cease and desist would be well within the authorities; but that is not this case. If the Commission is talking about a misconception created by respondent, then that is also not this case. This respondent adopted a proper trade-mark fairly and lawfully and has done nothing since that time but use it; any misconception that may exist on the part of purchasers has not been due to it but to happenings over which it had no control. The Commission may have jurisdiction to make adjustments in the situation in the public welfare but the Commission cites no authority or reason for its power to destroy the trade-mark.

If respondent had adopted any proper trade-mark in 1897 and if some other corporation or society incorporated in 1905 had adopted the same trade-mark, then clearly no matter how big or important or dominating the latter became, respondent would not lose its own trade-mark. It is not unknown for two concerns to have similar trade-marks; but the smaller company has never been required to surrender its trade-mark because of the greater prominence that the other company has attained. Here again, the Commission may well have jurisdiction to regulate in the public interest but it would have had no jurisdiction in such a situation to take away the trade-mark of respondent.

Equally beside the point is Commission's further argument that the rights of the pre-1905 users are no greater than they would have been had Congress never enacted any prohibition against the use of the name and symbol. If Congress in incorporating the American Red Cross Society had purported to give it only a non-exclusive right to the

name and symbol, then surely there would have been no basis for the Commission to do what Congress refrained from doing, namely to destroy the trade-marks of the pre-existing users. There is no reason or authority that a company adopting and using a lawful trade-mark should lose it because Congress subsequently creates a corporation with that trade-mark. Conceivably Congress in the public interest might end the use—a power which Congress would exercise with restraint and with provisions that would mitigate hardship. But the Commission would have no jurisdiction to do that which Congress refused to do—to terminate peremptorily the trade-marks of prior users. A corporation, even though incorporated by Congress, has no right to drive out prior users of its trade-mark no matter how big and powerful it may become. If it is to have special rights, it must obtain those rights from Congress. And if the prior users are to lose their rights, it can only be at the command of Congress. As we have said, it may well be within the regulatory jurisdiction of the Commission to make reasonable provision to meet the situation in the public interest, but the Commission has no jurisdiction here to usurp the functions of Congress and terminate the rights of the prior users. In the case at bar we do not have to guess at the intent of Congress; in passing the Red Cross Act it expressly said that it would not stop the use by the pre-1905 users. This has been fortified by the recent Congressional proceedings showing that Congress recognizes that the right of the pre-1905 users still continues and further showing that Congress is unwilling to terminate that right peremptorily. It recognizes them as "good faith" and "lawful" users, and has shown great zeal in protecting their equities.

POINT II.

THE ORDER OF THE CIRCUIT COURT OF APPEALS WAS A PROPER EXERCISE OF ITS JURISDICTION.

This Court in the recent case of *Connecticut Company* v. *Federal Power Commission*, 324 U.S. 515, reaffirmed the law to be that when a Federal administrative agency makes its findings of fact on an erroneous legal conception, the case should be referred to it for further proceedings in accordance with the opinion of the Court. In that case the Federal Power Commission had proceeded on the basis of a rule of law which this Court held erroneous and it returned the case to the Court of Appeals with instructions to remand the cause to the Federal Power Commission for further proceedings consistent with its opinion.

The action of the Circuit Court of Appeals in our case falls squarely within that rule. The Federal Trade Commission squarely stated in its findings that the provision of the Red Cross Act "has no application" to the proceeding (R. 49, fol. 145). Its findings of fact and its conclusions were accordingly grounded upon that assumption of law.

Of course, if the respondent is right in its contention that the Commission has no power to terminate its use of the Red Cross, then the Commission obviously proceeded on an erroneous conception of the law. But even without going that far, if the correct rule is merely that both Acts should be considered and the use by respondent not terminated unless necessary to carry out the provisions of the Federal Trade Commission Act, the Commission was still proceeding on an erroneous assumption of the law. It completely disregarded the Red Cross Act, holding its provisions inapplicable and leaving it completely out of account as a

factor to be considered. Therefore the Court below, after pointing out the error of law made by the Commission, remanded the case to the Commission for further proceedings in accordance with the opinion.

In view of the Commission's erroneous view of the law, the Record is completely barren of any evidence as to whether the public interest requires the peremptory and unqualified cessation of the use by the respondent; it does not appear that the Commission even gave that question any consideration. It merely found that the steps that the respondent had taken to prevent any misconception on the part of the public were not sufficient.

The Commission completely disregarded as irrelevant the equities of respondent as a pre-1905 user, despite the consideration and protection that Congress has given to those equities.

Viewing the situation objectively, we find that the Commission has ordered that which Congress after thorough, painstaking consideration has rejected. The Commission has ordered a peremptory, unconditional stoppage; Congress has stated that there is a continuing right to use but, further, has pointed out that, if that user should be stopped, it is compatible with the public interest to bring that about without peremptory unconditional cessation. The report accompanying the bill passed by the Senate pointed out the possibility of deception on the part of the public but nevertheless that bill first permitted the continued use for a period of time and then provided for use for a further period if a new trade-mark is used in such labeling for the purpose of indicating "in lettering smaller than the new trade name, design or insignia that such article was formerly identified by the Red Cross." When the House Committee

reported out this bill it left these conditions unchanged but extended the period to thirteen years. Thus it was the view that even if the rights of the pre-1905 users were to be ended, their use of the Red Cross could be continued under these conditions for extended periods without deception of the public.

It is also pertinent to note that there has been no contention on behalf of the Commission that the average reasonable person would be under any misconception. As a matter of fact, the Record is barren of any proof that any purchaser of the respondent's products bought because of a supposed connection.[15] The Commission did not claim that its witnesses represented a fair cross-section of the community; on the contrary, it appears that witnesses were interviewed in advance by the Commission (e.g. R. 100). All the Commission's witnesses except the first few were led in a way that no court of law would permit: each witness was first asked what the American Red Cross Society meant to him, what the American Red Cross Society did and what was the emblem of that Society; then when the witness had answered "Red Cross" to the last question, he would be shown respondent's label and be asked for his reaction.[16]

A witness, on whom the Commission largely relied, was a lady who also testified that she thought the United States Steel Company belonged to the United States of America and the Wilmington Trust Company to the City of Wilmington (R. 104). Another witness testified that she was

---

[15]The Record is bare that any purchaser was even confused except for the evidence of Miss Horty who testified that she once bought two boxes and believed at the time that "it had an attachment with the American Red Cross" (R. 91).

[16]For example, see R. 148, fol. 444. This technique was used with all succeeding witnesses.

under the impression that the Red Cross Society approves all good products (R. 214). The Record demonstrates that any possibility of misconception is very limited, and the danger to the public very small.

In this connection the decision of this Court in *Federal Trade Commission* v. *Royal Milling Company*, 288 U. S. 212, 217, is highly relevant.

> "These names (the trade names of respondent) have been long in use, in one instance beginning as early as 1902. They constitute valuable business assets in the nature of good will, the destruction of which probably would be highly injurious and should not be ordered if less drastic means will accomplish the same result. The orders should go no further than is reasonably necessary to correct the evil and preserve the rights of competitors and public. * * * This is a matter which the commission has not considered but which, as the body having primary jurisdiction, it should, in the first instance, consider and determine."

This case remains unchallenged. The Commission suggests that it should be contrasted with the *Algoma* case, *supra*. The *Algoma* case was decided less than a year after the *Royal Milling* case; it refers to the earlier case but in no way undertakes to limit it. The real contrast between the two cases is that in the *Algoma* case the respondent had called its lumber "white pine" when in fact it was not white pine; there was no reason why it should not stop the false labeling of its product. The considerations above quoted from the *Royal Milling* case were absent. The respondent in the *Royal Milling* case used the word "milling" in its trade name when in fact it did not mill. The consideration given to the good will of that company should certainly be given the respondent in the case at bar, which has not even

been guilty of that act or of any act like it. The complaint against the Royal Milling Company was that it improperly put the word "milling" in its trade name when it did not mill; the respondent at bar properly adopted a trade mark that was perfectly lawful and the complaint of the Commission is merely that because of the incorporation and growth of another association long after the event some part of the public may be confused.

In concluding this point, we quote from the opinion of this Court in *Ford Motor Company* v. *Labor Board*, 305 U.S. 364, 373:

> "The statute with respect to a judicial review of orders of the Labor Relations Board follows closely the statutory provisions in relation to the orders of the Federal Trade Commission, and as to the latter it is well established that the court may remand the cause to the Commission for further proceedings to the end that valid and essential findings may be made. * * * The 'remand' does not encroach upon administrative functions. It means simply that the case is returned to the administrative body in order that it may take further action in accordance with the applicable law."

POINT III.

THE DECISION OF THE COURT BELOW WAS TOO FAVORABLE TO THE COMMISSION.

Respondent recognizes that it did not apply for certiorari but nevertheless it may point out error in the Court below in order to sustain the judgment.

The Court below, in refusing to dismiss the proceeding relied upon the principles enunciated in the line of cases represented by *Federal Trade Commission* v. *Standard*

Education Society, 302 U. S. 112; and *Charles of the Ritz Corporation* v. *Federal Trade Commission*, 143 F. (2d) 676. Those cases dealt with situations in which the respondent had made false representations with respect to its product or had adopted false trade names or trade-marks. Such respondents obviously had no equity in their favor; it did not lie in their mouths to say that no one should have been deceived by their misrepresentations. The man who selects the untruth for dissemination has no equity to protect his wrongful act on the claim that it ought not deceive. Hence in those cases the far-reaching rule was applied that if anyone was deceived, even the credulous or the unthinking, it was sufficient to sustain an order to cease and desist.

But our situation is very different and we have been unable to find that any case such as ours has yet come before the courts for consideration. However, it is entirely probable that the future will see our situation recurring. For example, the hospitalization service known as the "Blue Cross" has grown tremendously in the last few years; it is now said to have twenty million members and it is expected to far outgrow the Red Cross Society. Before long it will be simple to find members of the public who, approached as were the witnesses in our case, will say that the Blue Cross used as a trade-mark on merchandise leads them to believe that the goods have some connection with the hospitalization association. Will that require business concerns which adopted the Blue Cross years ago and have built up a good will around it to abandon their trade-mark? Similarly, the "Green Cross" has been adopted as the symbol of the growing National Safety Council for the elimination of accidents. The same question may well arise in

connection with that trade-mark. Further, we have called attention hereinbefore to the position of those who over the years have adopted the Red Star for their trade-mark and the situation in which they will find themselves when the Red Star of Russia becomes widely known in this country following the increase of intercourse and commerce with that country.

Such concerns have done no wrong. They are not subject to the estoppel which stops a man who adopts an untrue trade name or a misdescription of his wares, claiming that no one should be deceived thereby. We urge that in our case and in the class of cases to which we have above referred no harsher rule should be applied than that the natural and probable result must be deceptive to the ordinary person.

Pep Boys—Manny, Moe & Jack, Inc. v. *Federal Trade Com.*, 122 F. (2d) 158, 161;
Federal Trade Commission v. *Balme*, 23 F. (2d), 615, 620;
Caigan v. *Plibrico Jointless Firebrick Co.*, 65 F. (2d) 849 (1933); Cert. Den. 290 U. S. 668.

Such a test the Commission does not claim to have met, nor has the Court below found that it has met such a test. The Court below used the test of "the unthinking and credulous members of the public." In its brief for certiorari, the Commission speaks of "the careless, ignorant, illiterate or foreign-born". In *Federal Trade Commission* v. *Standard Education Society*, 302 U. S. 112, 117, from which the Commission quotes "Laws are made to protect the trusting as well as the suspicious", this Court pointed out:

> "Testimony in the record from citizens of ten States—teachers, doctors, college professors, club women, business men—proves beyond doubt that the practice was not only the commonly accepted sales method for respondents' encyclopedias, but that it successfully deceived and deluded its victims."

It is urged that the business man who adopts his trademark without fault should not be held to the test of the Court below to preserve his property rights against subsequent events over which he has no control—certainly not respondents who are regarded as using in "good faith".

Accordingly, we believe that the Court below should have set aside the order of the Commission, and the Commission is not harmed by the entry of the far more favorable order from which it has appealed to this Court. This respondent did not appeal, for it is content to use its trademark as provided in the opinion of the Circuit Court of Appeals. It is not seeking to be free of reasonable regulation but is resisting unwarranted confiscation of its valuable property rights.

CONCLUSION.

For the reasons stated, it is respectfully submitted that the judgment of the Circuit Court of Appeals should be affirmed.

EDWARD H. GREEN
E. H. SYKES
Attorneys for A. P. W. Paper Company, Inc.

SULLIVAN & CROMWELL
Of Counsel

SUPREME COURT OF THE UNITED STATES.

No. 320.—October Term, 1945.

Federal Trade Commission, Petitioner, *vs.* A. P. W. Paper Company, Inc.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

[May 6, 1946.]

Mr. Justice Douglas delivered the opinion of the Court.

Respondent manufactures and sells toilet tissues and paper towels in interstate commerce. On each package or roll of one brand are a Greek red cross and the words "Red Cross". Respondent registered the words "Red Cross" and the Red Cross symbol as a trade mark; and it features them in its advertisements and on its letterheads. By § 4 of the American Red Cross Act of January 5, 1905, 33 Stat. 600, 36 U. S. C. § 4 it was made unlawful "for any person or corporation, other than the Red Cross of America, not now lawfully entitled to use the sign of the Red Cross, hereafter to use such sign or any insignia colored in imitation thereof for the purposes of trade or as an advertisement to induce the sale of any article whatsoever." That section was amended by the Act of June 23, 1910, 36 Stat. 604, 36 U. S. C. § 4. Sec. 4 of that Act made unlawful the use of the Greek red cross on a white ground or the words "Red Cross" for the purpose of trade or as an advertisement "to induce the sale of any article" or "for any business or charitable purpose" by any person other than the American National Red Cross[1] or its duly authorized employees and agents or the sanitary and hospital authorities of the army and navy. It

[1] The Red Cross organization had its origin in a treaty drafted at the Geneva Convention in 1864 and acceded to by the United States in 1882. 22 Stat. 940. The American Association of the Red Cross was incorporated in 1881 under the laws of the District of Columbia. It was reincorporated in 1893 under the laws of the District of Columbia as the American National Red Cross. On June 6, 1900 it was incorporated under the same name by Act of Congress (31 Stat. 277) and was reincorporated January 5, 1905, 33 Stat. 599. From the time of its first incorporation in 1881 down to the present, it has used the words "Red Cross" as a part of its name and has also used the emblem adopted by the 1864 Geneva Convention, the Greek red cross on a white ground.

contained, however, a proviso which reads as follows: "That no person, corporation, or association that actually used or whose assignor actually used the said emblem, sign, insignia, or words for any lawful purpose prior to January fifth, nineteen hundred and five, shall be deemed forbidden by this Act to continue the use thereof for the same purpose and for the same class of goods."

Petitioner's use of the trade name and emblem antedate January 5, 1905.[2] But in 1942 the Federal Trade Commission charged petitioner with a violation of § 5(a) of the Federal Trade Commission Act, 38 Stat. 719, as amended 52 Stat. 111, 15 U. S. C. §45, which makes unlawful "unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce."

A hearing was had, findings were made and a cease and desist order was issued. The Commission found that "the use by respondent of the words 'Red Cross' and of the mark of the Greek red cross to designate its products has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public in that such name and mark represent or imply that respondent's products are sponsored, endorsed, or approved by the Red Cross; that the Red Cross is financially interested in the sale of the products; that the products are used by the Red Cross; that the products are manufactured in accordance with sanitary standards set up by the Red Cross; or that there is some other connection between the products and the Red Cross. Not only are these, in the opinion of the Commission, reasonable inferences to be drawn from the use of the name and mark, but the record affirmatively shows that the name and mark are in fact so understood and interpreted by many members of the public." The Commission also found that statements on respondent's products that they are made by respondent and that the name and mark are registered "do not serve to correct the erroneous and misleading impression created through the use of the trade name and mark." The Commission entered an order which, among other things, forbade respondent from using the

[2] Toilet tissues were marketed by petitioner under that trade name and emblem since 1897 and paper towels since 1933. The trade-mark was first registered in the Patent Office in 1911 and was extended to cover paper towels in 1934.

The Commission made no finding as to whether the paper towels were of the same class of goods as the toilet tissue within the meaning of the proviso to §4 of the 1910 Act.

words "Red Cross" to describe its products and from displaying the Greek red cross on them.[3] 38 F. T. C. 1.

On a petition for review the Circuit Court of Appeals, by a divided vote, reversed the order of the Commission. 149 F. 2d 424. It held that the order went beyond permissible limits in forbidding any use of the words and the mark. It remanded the case to the Commission for the formulation of a new order which, though not forbidding the use of the words and the symbol, might require statements which would avoid any inference that the goods were sponsored or approved or in any way connected with the American National Red Cross. The case is here on petition for a writ of certiorari which we granted because of the importance of the problem in the administration of the Federal Trade Commission Act.

There is no suggestion that the pre-1905 use of the words and the symbol was an unlawful one within the meaning of either the 1905 or the 1910 Act. Nor has the Commission found that respondent has engaged in any fraudulent activity or made any untruthful statements in connection with its use of the words and the symbol. Therefore this is not a case where the words and symbols were either adopted or used pursuant to a fraudulent design, aimed at creating the impression that these products were sponsored by or otherwise carried the imprimatur of the Red Cross. Hence, here, as in *Siegel Co.* v. *Federal Trade Commission*, 327 U. S. ——, we have no problem involving the power of the Commission to uproot a fraudulent scheme in its entirety. But it is argued that however lawful the earlier use may have been, it cannot survive a finding by the Commission that the use constitutes an unfair or deceptive act or practice in commerce. It is pointed out that the 1938 amendment to the Federal Trade Commission Act gave the

[3] It ordered respondent to cease and desist from

"1. Using the words 'Red Cross' or any abbreviation or simulation thereof, either alone or in combination or connection with any other word or words, to designate, describe, or refer to respondent's products.

"2. Using or displaying on respondent's products or in any advertisement of such products the mark of the Greek red cross, or any other mark, emblem, sign, or insignia simulating or resembling such cross.

"3. Representing in any manner or by any means, directly or by implication, that respondent's products are sponsored, endorsed, or approved by the Red Cross; that the Red Cross is financially interested in the sale of said products; that said products are used by the Red Cross; that said products are manufactured in accordance with sanitary standards set up by the Red Cross; or that there is any other connection between said products and the Red Cross." 38 F. T. C. 3.

Commission power to protect consumers, as well as competitors, against unfair or deceptive practices.[4] It is said that there are no exceptions to that broad power and none should be implied from the Red Cross Act of 1910. The latter Act, it is said, confers no general rights but only a limited immunity and should not be construed as exempting pre-1905 users of the name and emblem from regulatory legislation of general application which Congress may from time to time enact for the protection of the public. It is also argued that by the Geneva Convention of 1929, which was ratified by the United States[5] in 1932, the United States agreed to prohibit the use by private persons of the name and the symbol and that the Red Cross Act and the Federal Trade Commission Act should not be construed in favor of conduct which this nation is under international obligation to terminate.

We agree, however, with the Circuit Court of Appeals. It is clear that the 1910 Act granted, or at least recognized, the right of pre-1905 users to continue the use of the words and the symbol.

---

[4] In Federal Trade Commission *v.* Raladam Co., 283 U. S. 643, 647 et seq., the Court had ruled that, "The paramount aim of the act is the protection of the public from the evils likely to result from the destruction of competition or the restriction of it in a substantial degree, and this presupposes the existence of some substantial competition to be affected, since the public is not concerned in the maintenance of competition which itself is without real substance." The 1938 amendment to § 5 of the Federal Trade Commission Act was designed to make "the consumer, who may be injured by an unfair trade practice, of equal concern, before the law, with the merchant or manufacturer injured by the unfair methods of a dishonest competitor." H. Rep. No. 1613, 75th Cong., 1st Sess., p. 3. And see S. Rep. No. 221, 75th Cong., 1st Sess., p. 3.

[5] 47 Stat. 2074. Article 28 provides in part (47 Stat. 2092):

"The Governments of the High Contracting Parties whose legislatures may not now be adequate shall take or shall recommend to their legislatures such measures as may be necessary at all times:

"(a) to prevent the use by private persons or by societies other than those upon which this Convention confers the right thereto, of the emblem or of the name of the *Red Cross* or *Geneva Cross*, as well as any other sign or designation constituting an imitation thereof, whether for commercial or other purposes;

. . . . . .

"The prohibition mentioned in subparagraph (a) of the use of signs or designations constituting an imitation of the emblem or designation of the *Red Cross* or *Geneva Cross*, ... shall take effect from the time set in each act of legislation and at the latest five years after the Convention goes into effect. After such going into effect it shall be unlawful to take out a trademark or commercial label contrary to such prohibitions."

[6] The manager of the bill which became the 1905 Act stated on the floor of the House during the debate that it would not "interfere with any lawful right now existing." 39 Cong. Rec. 406.

Judge Learned Hand, speaking of the 1910 Act in Loonen *v.* Deitsch, 192 Fed. 487, 492, stated: "Whatever may have been the policy before, Con-

The House Report stated that the Act as amended "will permit the use of the symbol . . . by such persons, corporations, and associations as actually used the emblem prior to January 5, 1905, for the purposes for which they were so entitled to use it and for the same class of goods. The section, as so amended, grants to the American National Red Cross the fullest protection it is possible to afford it by congressional enactment and at the same time amply protects the concerns possessing vested property rights in the emblem." H. Rep. No. 1256, 61st Cong., 2d Sess., pp. 2-3. It is apparent from the terms of the 1905 Act and the 1910 Act[7] that Congress was concerned not only with protecting the Red Cross against pretenders but also with protecting the public against the false impression that goods purchased were the products of the Red Cross or were sponsored by it. Congress, however, did not go the full distance. It preserved the right of earlier, good faith users to continue the use of the words and the symbol. It may have concluded that the mark which had been acquired was a valuable business asset which should not be destroyed. Or it may have thought that the extent and manner of the use by the established concerns were not likely to injure the public.[8] But whatever the

---

gress has now definitely declared in the proviso of the latter act that it would permit such marks if they antedated 1905. Congress had power so to legalize the use of it: the question of public policy was for it and for it alone, and it is now finally closed."

[7] As we have already noted, the 1905 Act made it unlawful "for any person or corporation, other than the Red Cross of America, not now lawfully entitled to use the sign of the Red Cross, hereafter to use such sign or any insignia colored in imitation thereof for the purposes of trade or as an advertisement to induce the sale of any article whatsoever."

And § 4 of the 1910 Act, which we have already summarized, provided:

"It shall be unlawful for any person, corporation, or association other than the American National Red Cross and its duly authorized employees and agents and the army and navy sanitary and hospital authorities of the United States for the purpose of trade or as an advertisement to induce the sale of any article whatsoever or for any business or charitable purpose to use within the territory of the United States of America and its exterior possessions the emblem of the Greek Red Cross on a white ground, or any sign or insignia made or colored in imitation thereof, or of the words 'Red Cross' or 'Geneva Cross' or any combination of these words: *Provided, however*, That no person, corporation, or association that actually used or whose assignor actually used the said emblem, sign, insignia, or words for any lawful purpose prior to January fifth, nineteen hundred and five, shall be deemed forbidden by this Act to continue the use thereof for the same purpose and for the same class of goods."

[8] Judge Learned Hand in Loonen v. Deitsch, *supra*, note 6, p. 489, stated: "Does the mark actually mean that the society is in any way concerned with the manufacture of the goods? I think not. We have become

purpose, the fact remains that the good faith use of the mark by the pre-1905 users was intended to be preserved unimpaired.

We cannot lightly infer that this specific right was intended to be swept away under the 1938 amendment to the Federal Trade Commission Act. Repeals by implication are not favored. Yet if the order of the Commission stands, the right granted or recognized by the 1910 Act becomes a nullity. For the use of the words and the symbol by good faith pre-1905 users becomes *per se* unlawful. As the 1910 Act, like the Federal Trade Commission Act, was in part directed towards protection of the public against deceptive practices, we think the two Acts must be read in *pari materia*. The problem is to reconcile the two, if possible, and to give effect to each. We think that may be done by recognizing that while the good faith use of the words and symbols by pre-1905 users is permissible, the Commission may require the addition of language which removes any misleading inference that the products are in fact sponsored, approved, or in any manner associated with the American National Red Cross.

We need comment only briefly on the Geneva Convention of 1929, which was ratified by the United States in 1932.[9] The undertaking "to prevent the use by private persons" of the words or symbol is a matter for the executive and legislative departments. The problem has been before the Congress in recent years.[10] No action has

---

familiar with it in the past for many other uses than that of the Society, though happily such uses will now slowly disappear. It has been used on hospital ambulances, upon medicaments, upon doctors' motor cars, upon barber shops, upon laundries, and for military field service not connected with the Red Cross Society. In short, until the legislation of 1905 (Act Jan. 5, 1905, c. 23, 33 Stat. 599 [U. S. Comp. St. Supp. 1909, p. 1038]), it had been quite instinctively adopted for many uses which were congruous with the chief objects of the society, but which did not indicate that the society had anything to do with them, or certainly with the frequency of the use ceased to do so. Finally, Congress has clearly recognized that fact by permitting all those who prior to 1905 had used the mark lawfully to continue."

[9] See note 5, *supra*.

[10] In the 77th Congress a bill to eliminate over a period of years the exemption given to pre-1905 users was favorably reported by the Committee on Foreign Affairs of the House. H. Rep. 2387, 77th Cong., 2d Sess. This proposed legislation was designed to discharge the obligation of the United States under the Geneva Convention of 1929. *Id.*, pp. 1, 2, 4.

In the 78th Congress a bill passed the Senate with similar provisions. 90 Cong. Rec. 398, 401, 3656. It was reported favorably, with amendments, by the Committee on Foreign Affairs of the House. H. Rep. No. 2054, 78th Cong., 2d Sess. This proposed legislation was likewise designed to discharge the obligation of the United States under the Geneva Convention of 1929. *Id.*, pp. 4-6. And see 90 Cong. Rec. 399.

yet been taken. But we can find in that inaction no basis for concluding that the rights of good faith, pre-1905 users granted or recognized by the 1910 Act are today in any way impaired. Indeed, the existence of that right was recognized as giving rise to the need for additional legislation.[11] That assumption can hardly be reconciled with the conclusion that complete relief is already accorded under the Federal Trade Commission Act.

We do not undertake to prescribe the order which the Commission should enter. The fashioning of the remedy is a matter entrusted to the Commission, which has wide latitude for judgment. *Siegel Co. v. Trade Commission*, *supra*. We only hold that under the facts of this case the Commission may not absolutely forbid the use of the words and the symbol by respondent.

Affirmed.

Mr. Justice JACKSON took no part in the consideration or decision of this case.

[11] See H. Rep. No. 2387, *supra*, note 10, pp. 2, 3; H. Rep. No. 2054, *supra*, note 10, pp. 4-6. In the latter Report it was, indeed, recognized "that under existing law, there are legal uses of the symbol by commercial users." p. 4.